BOSTON PUBLIC LIBRARY
3 9999 06317 382 5

* 331.1 A33

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

SECTION 7(a): ITS HISTORY, INTERPRETATION AND ADMINISTRATION

By
Raymond S. Rubinow

Part E
no. 1

(A Section of Part E: Section 7(a) of the Recovery Act)

WORK MATERIALS NO. 45
THE LABOR PROGRAM UNDER THE NIRA

Work Materials No. 45 falls into the following parts:

Part A: Introduction
Part B: Control of Hours and Reemployment
Part C: Control of Wages
Part D: Control of Other Conditions of Employment
Part E: Section 7(a) of the Recovery Act

LABOR STUDIES SECTION
March, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

SECTION 7(a): ITS HISTORY, INTERPRETATION AND ADMINISTRATION

by
Raymond S. Rubinow

LABOR STUDIES SECTION
March, 1936

9860

U S Dept of Commerce
Oct. 22, 1927

F O R E W O R D

This study of Section 7(a) was prepared by Raymond S. Rubinow under the supervision of Miss Mollie Ray Carroll and Messrs. P. A. Brissenden and R. W. Stone.

An account of the contribution of the NRA in the field of industrial relations through Section 7(a), sub-sections (1) and (2), may be made to fall under the following topics: a) the history of Section 7(a), its interpretations and the machinery established to carry out its provisions; b) evaluation of Section 7(a) as a vehicle for "tri-partite cooperation toward recovery" viewed in the light of labor's concept of collective bargaining, together with the issues that this effort has raised; and c) the experiences and decisions of the labor relations boards in the evolution of a "common law of labor relations."

Unfortunately, it has not proved feasible to make available in mimeographed form the experiences and decisions of those Labor Relations Boards which operated in direct connection with NRA and were therefore appropriate subjects for consideration by the Division of Review. As for the other fields of study suggested above, the first appears in the present report and the second is also to be found in Work Materials No. 45, Part E, under the title, "Partnership toward Recovery, Section 7(a) as a Method."

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall,

March 27, 1936 Director, Division of Review

TABLE OF CONTENTS

		Page
Foreword		i
Summary		1
CHAPTER		
I.	SECTION 7 (A) OF THE NIRA	2
	Section 7 (a)	2
	The Labor Sections of Title I	3
	Relation of Labor Objectives to other Objectives of NIRA	4
II.	ANTECEDENTS OF SECTION 7 (A)	7
	Principles of Organized Labor	7
	Findings of Public Commissions	8
	Legislative Enactments	9
	Decisions of the Courts	14
III.	SECTION 7 (A) IN CONGRESS	18
	Presidential Message	18
	House Committee Hearings	19
	Report of the House Committee	25
	Section 7 (a) on Floor of the House	26
	Senate Committee Hearings	27
	Senate Committee Reports	39
	Debate in the Senate	41
	From Conference to Law	49
IV.	INTERPRETING SECTION 7 (A)	50
	Early Interpretation	50
	Proposed Industry Interpretations of Section 7 (a)	57
	"Open Shop" Issue	57
	The "Merit Clause" Controversy	59
	"Collective Bargaining" in Coal	61
	The Meaning of Section 7 (a)	64
V.	THE IMPLEMENTATION OF SECTION 7 (A): THE LABOR BOARDS	67
	"General", "Special", and "Code" Boards	67
	The National Labor Board	68
	The National Labor Relations Board	73
	The Special Boards	73
	The Code Boards	74
	Conflict of N.R.A. and N.L.B.	75
	Second Year of N.R.A.	77

Page

VI. THE "COMMON LAW" OF SECTION 7 (A) 79

The Right to Bargain Collectively 80
The Meaning of Collective Bargaining 81
The Election of Representatives 83
The Interference of Employers 85
The Issue of Majority Rule 90

DOCUMENTARY APPENDICES

APPENDIX I LEGISLATIVE DATA ON NATIONAL INDUSTRIAL RECOVERY ACT 94

I-A Legislative History
I-B Guide to Legislative Documentation

APPENDIX II STATEMENTS BY WITNESSES BEFORE CONGRESSIONAL COMMITTEES 99

II-A Senator Robert F. Wagner, of New York
II-B Mr. William Green, President, American Federation of Labor
II-C Mr. Donald R. Richberg
II-D Mr. James A. Emery, representing National Association of Manufacturers
II-E Mr. E. L. Michael, representing Virginia Manufacturers Association
II-F Mr. Charles R. Hook, President American Rolling Mill Company
II-G Mr. Robert P. Lamont, representing the American Iron and Steel Institute
II-H Mr. John L. Lewis, representing United Mine Workers and the American Federation of Labor

APPENDIX III SENATE DEBATE ON "EXISTING SATISFACTORY RELATIONSHIPS" AMENDMENT TO SECTION 7 (A) 137

APPENDIX IV PROPOSED CODE OF FAIR COMPETITION FOR THE IRON AND STEEL INDUSTRY - SCHEDULE C FUNDAMENTAL PRINCIPLES OF EMPLOYEE REPRESENTATION PLANS 152

APPENDIX V LABOR ADVISORY BOARD STATEMENT ON THE "INDIVIDUAL MERIT" CLAUSE 154

APPENDIX VI ENABLING DOCUMENTS OF THE NATIONAL LABOR BOARD AND THE NATIONAL LABOR RELATIONS BOARD 156

VI-A The National Labor Board
VI-B The National Labor Relations Board

APPENDIX VII READING AGREEMENT - FIRST DECISION OF THE NATIONAL LABOR BOARD 166

Page

APPENDIX VIII INTERPRETATION BY GENERAL JOHNSON AND MR. RICHBERG OF PRESIDENT'S EXECUTIVE ORDER OF FEBRUARY 1, 1934. 167

APPENDIX IX ADMINISTRATIVE ORDERS X-12 AND X-69 . . . 169

IX- A X-12...March 30, 1934 - Industrial Relations Committees
IX- B X-69...July 27, 1934, - Labor Complaints and Disputes

APPENDIX X PRINCIPLES FOLLOWED IN DECISIONS OF NATIONAL LABOR BOARD AND NATIONAL LABOR RELATIONS BOARD 171

X- A The National Labor Board
X- B The National Labor Relations Board

APPENDIX XI SELECTED BIBLIOGRAPHY 180

S U M M A R Y

Section 7 (a), which affirmed labor's right to organize and bargain collectively, was written into the National Industrial Recovery Act to provide for labor's joint participation in the recovery program. Although prominently in the public eye, due to the controversy it aroused, Section 7 (a) was not a radical innovation in the regulation of industrial relations in America, but was the further expression of the trend of the last fifty years. During this time, the principles of organization and collective bargaining had been announced by labor spokesmen, approved by various public commissions, and upheld by decisions of the courts.

As it passed through the various stages of legislative consideration, Congress joined forces with leaders of labor to prevent the intent of Section 7 (a) from being frustrated by various proposals for qualification, originating from industry. The Administrator in attempting to maintain a role of "perfect neutrality" toward the conflicting claims of labor and industry, as to the rights and duties imposed by Section 7 (a), disappointed the expectations of labor, and aroused the opposition of industry.

Various labor boards were set up to mediate the disputes and adjudicate the conflicts, arising from the attempt to carry out the provisions of Section 7 (a). Although these boards created the beginnings of a "common law" of industrial relations, their effectiveness was hampered by the lack of clear definition of their respective jurisdictions. The series of Executive Orders, in shifting authority back and forth between these boards, produced a conflict between agencies whose function should have been supplemental rather than competitive.

SECTION 7(a): ITS HISTORY, INTERPRETATION, AND ADMINISTRATION 1/

The National Industrial Recovery Act (*) passed by Congress on June 16, 1933, contained three titles as follows:

Title I	Industrial Recovery
Title II	Public Works and Construction Projects
Title III	Amendments to Emergency Relief and Construction Act and Miscellaneous Provisions

Title I set forth a program for industrial recovery, the major objectives of which were the removal of obstructions to the free flow of interstate commerce, the promotion of cooperative action among trade groups, and between labor and management, the elimination of unfair competition, and the relief of unemployment, under government sanctions and supervision. In this title are found the provisions establishing the NRA. (**)

Section 7(a)

Section 7(a) of Title I of the National Industrial Recovery Act, reads as follows:

"Every codes of fair competition, agreement and license approved, prescribed or issued under this title shall contain the following conditions:

(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other connected activities for the purpose of collective bargaining or other mutual aid or protection;

1/ At the outset of this study to alernative treatments for utilizing the four months available, suggested themselves. One was the detailed consideration of certain aspects of the subject not covered by existing studies. The other was the narration of the significant events in the history of Section 7(a). The latter more fully met the needs of the program of the Division of Review.

The writer is fully conscious of the limitations of the present product. The pressure of time did not permit as comprehensive a treatment as the subject merits. Further, the study lays no claim to originality. It attempts merely to supply historical background and to bring together in convenient form, as documentary appendices, certain scattered materials.

Grateful acknowledgements are due Drs. Paul Brissenden, Mollie Ray Carroll and R. W. Stone for comment and criticism freely given, and to Mrs. Ruth Evans for competent secretarial assistance.

(*) 48 Stat. L. 195.

(**) Where mention is made in this study to the NIRA, the reference is to Title I.

(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizaing, or assisting a labor organization of his own choosing; and,

(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President."

It will be noticed that Section 7(a) contains three clauses. The first is usually known as the "organization and collective bargaining" clause. The second is referred to as the "yellow dog contract" clause. Both of these clauses have numerous antecedents. (*) Clause (3) represents a new formulation, applying as it does to the peculiar institutional setup of industrial regulation as established by the NIRA. In this study mention of Section 7(a) has reference to clauses (1) and (2) only. (*)

The Labor Sections of Title I

While Section 7(a) is the most important, there are several provisions of the Act dealing with labor issues. These are found in Section 1, Section 3, Section 4 and Section 7, itself.

Section 1 is a declaration of policy; it states among others, the labor objectives of the Act. These are considered in detail below.

Under Section 3(a) the President is authorized to approve codes of fair competition provided that "the President may, as a condition of his approval of any such code, impose such conditions --- for the protection of consumers, competitors, employees and others or in furtherance of the public interest --- as the President in his discretion deems necessary to effectuate the policy herein declared."

Under Section 3(b), the provisions of codes approved by the President, including the labor provisions, "shall be the standards of fair competition for such trade or industry or subdivision thereof" and any violation of such standard shall be deemed an "unfair method of competition" as defined by the Federal Trade Commission Act.

(*) This is also the case in the literature of the subject. For the view that Section 7(a), clause (3), furnished the basis for the implementation, via Section 7(b), of the rights of organization and collective bargaining affirmed in Section 7(a), see, Solomon Barkin, "Collective Bargaining and Section 7(b) of N.I.R.A." Annals of Academy of Political and Social Science. March, 1936. It has also been stated that this clause indicates the intent of Congress as to a minimum wage policy under the codes. See "Policy in the Control of Wages," Chapter II. NRA Division of Reivew Labor Studies.

(**) These are discussed in Chapter II

Section 3(d) gives the President power under certain special circumstances to "prescribe and approve" a code, which is to have the same effect as a code approved under Section 3(a).

Section 4(a) authorized the President to "enter into agreements with, and approve voluntary agreements between and among persons engaged in a trade or industry, labor organizations and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title ---" that is, the President has the power to approve labor provisions mutually agreed to between labor organizations and employers.

Section 7 contains three clauses, the second and third of which usually have been overlooked in the focussing of public attention upon the more famous Section 7(a). Section 7(b) sets forth a procedure whereby voluntary agreements or labor standards may be arrived at through collective bargaining. These agreements, approved by the President, are to have the same effect as a "code of fair competition." Section 7(c) gives the President the power to investigate conditions and impose a limited code, fixing maximum hours, minimum wages and other conditions, to be applied presumably in the case of a recalcitrant industry.

Consideration of the above provisions will reveal their several statutory functions. The clauses of Section 3 point out that in the process of making codes, which are to be subject to the President's approval, certain labor standards will be requisite. As will be noted, Section 3, however, contains no prescription as to the manner (as between individual, or collective, agreement), in which such labor standards are to be arrived at.

Section 4(a) constitutes a first approach to such a prescription by providing that a voluntary collective agreement approved by the President will have the same effect as a code.

Section 7 is, of course, the fullest expression of the Act's interest in the matter, affirming as it does the right to bargain collectively and making illegal certain interferences with that right, in sub-section (a); suggesting preferred procedure for the formulation of labor standards (by collective action), in sub-section (b); and outlining a procedure for dealing with recalcitrants, in sub-section (c).

These three sets of provisions, Sections 3, 4 and 7, stand as the technical expression of the labor objectives of the Act.

Relation of Labor Objectives to Other Objectives of NIRA.

In order to understand these objectives and their relation to the rest of the NIRA, we may consider the purpose of the Act as set forth in Title I, Section 1 - Declaration of Policy. (*)

(*) The language of this Section as it appears in the Act, is here broken down into its separate clauses. The numbering has been done by the writer, but the sequence is that found in the Act.

"A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to:

1. Remove obstructions to the free flow of interstate and foreing commerce which tend to diminish the amount thereof.

2. Provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups.

3. Induce and maintain united action of labor and management under adequate governmental sanctions and supervision.

4. Eliminate unfair competitive practices.

5. Promote the fullest possible utilization of the present productive capacity of industries.

6. Avoid undue restriction of production (except as may be temporarily required).

7. Increase the consumption of industrial and agricultural products by increasing purchasing power.

8. Reduce and relieve unemployment.

9. Improve standards of labor.

10. Rehabilitate industry.

11. Conserve natural resources."

The labor purposes of the Act are thus seen to be implicit, chiefly, in clauses three, seven, eight and nine. They were the securing of cooperative action of labor and management, the increasing of purchasing power, the reduction of unemployment, and the improvement of the standards of labor. (*)

It is not the purpose here to examine to what extent some of these "labor objectives" may or may not be internally consistent, or be in conflict with the other objectives of the Act. Such analyses have been made elsewhere. (**) It is appropriate simply to suggest that apparently Section 7(a) was inserted as an implementation of objective No. 3 - "To induce and

---

(*) Perhaps clauses four, six, ten might be included in this list; they are, however, of a second order of importance in terms of their immediacy of bearing upon labor interests.

(**) See Lyon, Leverett S. et al - "The National Recovery Administration, Chapters XVI, XXXI, XXXII

maintain united action of labor and management under adequate governmental sanction and supervision." The implication is that while such "united action" was desired, it was necessary to construct the channel whereby the desired objective might be attained. Section 7(a) constitutes that channel, and it is worthy of note also that it represents with one exception (*) the only provision whose inclusion in the codes of fair competition was mandatory.

(*) Section 10(b)

CHAPTER II - ANTECEDENTS OF SECTION 7(A)

Section 7(a) was destined to become one of the most controversial issues that arose under the operation of the National Industrial Recovery Act. This was due to the attempted wideness of its application, and the resistance such attempts encountered, rather than to any novelty residing in the section itself. Neither the principle affirmed -- the right of organization and collective bargaining -- nor the language in which it was couched, possessed any great uniqueness or originality. Nor was either foreign to American labor law or labor legislation. Their previous legislative application, however, had been restricted to a much more limited area. It traces as far back as 1898, and both principle and language are found in various forms from that time on.

There are at least four kinds of such expressions of the right to organize and to bargain collectively. First, there are the various pronouncements of the leaders of organized labor groups. Second, there are the statements and recommendations of various public commissions appointed to study industrial relations or to settle industrial disputes. Third, there are the various legislative enactments which have incorporated one or more of the clauses later to be included in Section 7(a) of the NIRA. Fourth, there are the decisions handed down by the courts.

Organized Labor

The leaders of organized labor have frequently voiced labor's belief in, and demand for, the right to organize and bargain collectively. The former famous leader of the miners, John Mitchell, wrote, some thirty years ago, perhaps over-optimistically, as follows:

> "The hope of future peace in the industrial world lies in the trade agreement. There is nothing so promising to the establishment of friendly relations between labor and capital as the growing tendency of representatives of both sides to meet in friendly conference in order to settle conditions of employment. The men assembled in National joint convention represent two great estates, the employers and the workmen of a vast industry. It is like a congress legislating for a nation or rather like a coming together of the representatives of two great nations, upon the basis of mutual respect and mutual toleration, for the formulation of a treaty of peace for the government of industry and the prosperity and the welfare of the contracting parties . . .
>
> "Trade agreements therefore, even in their simplest form, represent the central idea for which trade unionism stands, viz., the collective or joint bargain and they presuppose the existence of a union and, in the case of agreements upon a large scale, associations of employers as well as of workmen." (*)

The well known former president of the American Federation of Labor, Samuel Gompers, has said on this subject:

> "Collective bargaining means that the organized employees of a trade or industry, through representatives of their own choosing, shall deal with the employer or employers in the making of wage scales and

(*) John Mitchell, Organized Labor, New York, 1903, p. 347, 351

working conditions. Collective bargaining is the only practical proposal for adjusting relations between the management and the workers in a business way assuring a fair deal to both sides.

"In no other walk of life does the idea exist that a man must arbitrarily accept any offer made by another. There are two sides always to an agreement. Each side ought to have equal chances to propose and insist upon what it considers a fair agreement . . .

"Collective bargaining in industry does not imply that wage earners shall assume control of industry, or responsibility for financial management. It proposes that the employees shall have the right to organize and to deal with the employer through selected representatives as to wages and working conditions." (*)

Mr. William Green, the present president of the A. F. of L., when secretary of the United Mine Workers of America, wrote as follows:

"Collective bargaining and union recognition go hand in hand. In fact there can be no recognition of the principle of collective bargaining without a corresponding recognition of the right of workers to organize into trade unions. Collective bargaining is a meaningless term, void of any virtue and of no consequence whatever when the workers are denied the right to organize and union-recognition is not accorded them. To deny the workers the right to organize is nothing more than improper interference with the exercise of an inherent right and the normal activities of a free people." (**)

Public Commissions

Probably the most famous of the public commissions in the field of industrial relations was the Industrial Commission created by Act of Congress in 1898, and which published a report of some twenty volumes. Its Final Report, issued in 1902, contains the following statement indicating the Commission's support of the principle of collective bargaining.

Advantages of Collective Bargaining

"Whatever may be thought of the desirability of legislation regarding the settlement of labor disputes, there is a general concensus of opinion that the voluntary extension and perfection of systems of collective bargaining, conciliation, and arbitration within the various trades themselves would prove highly advantageous, both to employers and working men, and to the general public. These practices are not indeed equally applicable to all trades and localities. Thus it is quite commonly asserted that, in the absence of reasonably strong organization among working men, they can neither sufficiently command the respect of employers, nor exercise a sufficiently strong aggregate control over individual employees, to make collective bargaining and arbitration practicable. To insure success there must be on each side approximately equal strength, a fairly high degree of intelligence, and a disposition to fairness and to businesslike methods." (***)

(*) American Federationist, March 1930, pp. 358-359
(**) United Mine Workers Journal, May 15, 1933, p. 10
(***) Final Report of the Industrial Commission, Washington, 1902.
9860 Volume XIX, pp. 844-845

The report of the Anthracite Coal Commission created to settle the anthracite strike of 1902, included among its eleven awards, the following:

> "The Commission adjudges and awards: That no person shall be refused employment, or in any way discriminated against, on account of membership or non-membership in any labor organization, and that there shall be no discrimination against, or interference with, any employee who is not a member of any labor organization by members of such organization."(*)

The United States Commission on Industrial Relations created by Act of Congress in 1912, made in its Final Report (1915), certain pronouncements and recommendations bearing upon the subject of collective bargaining and employers' associations.(**) The Report considered that joint agreements between employers associations and trade unions were the most satisfactory way of regulating conditions of employment. Provided that they were preceded by adequate discussion and deliberation, such agreements were held to be a more comprehensive, elastic and democratic form of regulation than that of legislation enactment. The Commission recommended,

> "the extension of joint agreements as regards not only the field of industry which they cover, and the class of labor included, but the subjects which are taken up for negotiation and settlement. Greater responsibility for the character, skill and conduct of their members should accompany the greater participation of trade unions in the governing of industry." . . . .

Distinguishing between "bargaining associations" - those which dealt with unions; and "hostile associations" - those which opposed collective bargaining, the Commission condemned the latter in the following terms:

> "Inasmuch as the right of workers to organize in any manner that they see fit is fully recognized by society and has repeatedly been given a legal status in the decisions of even the most conservative courts, there is strong reason for holding that these hostile employers' associations which are organized primarily for the prevention of organization, are not only anti-social but even, perhaps, illegal."

Legislative Enactments

The legislative antecedents of Section 7 (a) are numerous. Clause (1) dealing with the right of "self-organization" and "collective bargaining" traces back to the Clayton Act of 1914, and is found in various formulations in the Transportation Act (1920), Railway Labor Act (1926), Norris-La Guardia Anti-Injunction Act (1932). Clause (2) prohibiting the "yellow-dog" contract goes back, in essence, even further, to the Erdman Act of 1898, and appears in the Norris-La Guardia Act (1932), in the 1933 Amendments to the Bankruptcy Act, the Emergency Railroad Transportation Act (1933). The essentials of both clauses are to be found in the Black Bill of 1933.

(*) Report of Anthracite Coal Strike Commission, Bulletin of the Department of Labor #46, May, 1903, p. 509.

(**) U.S. Commission on Industrial Relations, Final Bulletin, 1915, pp. 191-193.

The Erdman Act of 1898, which applied to interstate railroad transportation provided, in Section 10:

> "That any employer subject to the Act -- who shall require an employee or any person seeking employment as a condition of such employment to enter into an agreement -- not to become or remain a member of any labor organization; or shall threaten any employee with loss; or shall unjustly discriminate against any employee of his membership in such labor organization -- is hereby declared to be guilty of a misdemeanor---."(*)

In this Section of the Act, phrased in perhaps somewhat more involved language, we have the earliest forerunner of clause (2), the "yellow-dog contract" clause, of Section 7 (a).(**)

The Clayton Act of 1914 was hailed by labor as its "Magna Charta", because it was believed that it would exempt labor from the application of Sherman Anti-Trust Act, and protect it from injunctions. These expectations were based on the following provisions:

> Section 6. - "The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor organizations instituted for purposes of mutual help, ... nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws . . . . ."
>
> Section 20. - "No restraining order or injunction shall be granted to any court of the U. S. . . . . in any case between an employer and employee . . . . . growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property . . . . . for which there is no proper remedy at law . . . ."(***)

Although the constitutionality of the Clayton Act was upheld by the Supreme Court in the case of Duplex Printing Press,(****) the exemption from injunctions was held inapplicable. The history of the statute has shown numerous attempts by the courts to evade its provisions.(*****)

(*) 30 Stat. 424 c. 371 (1898).

(**) This Act was later declared unconstitutional by the Supreme Court in Adair v. United States, 208 U. S. 161 (1908), as an interference with the employer's "liberty of contract."

(***) 38 U. S. Stat. c. 323, 730.

(****) Duplex Printing Press v. Deering, 254 U. S. (1926).

(*****) See discussion in Great Northern Ry. Co. v. Brosseau, 286 Fed. 414 (1923).

Although established by Presidential proclamation and thus not strictly falling within this classification of legislative enactments, the National War Labor Board, which comes at this point in the chronological sequence, may be mentioned here. This Board, consisting of twelve members, five chosen by industrial associations, five by the American Federation of Labor, and two by the public, was guided in its decisions by a series of principles among which are found the following two, which state the principles later found in clauses (1) and (2) of Section 7 (a):

> "The right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by employers in any manner whatsoever.
>
> "Employers should not discharge men for membership in trade unions, nor for legitimate trade union activities."(*)

The Transportation Act of 1920 called for collective negotiations by providing,

> "that all railroad labor disputes shall be considered and if possible decided in conferences between representatives designated and authorized so to confer by the carriers or the employees . . . . thereof, directly interested in the dispute."(**)

The Railway Labor Act of 1926, elaborated on the provisions of the Transportation Act. The first three provisions of Section 2 are the most important in this connection:

(*) U. S. Bureau of Labor Statistics, Bulletin No. 287, "National War Labor Board," p.32. In addition to the provisions cited above giving labor certain rights and protection, provisions were included conveying roughly parallel rights and protection to employers, as follows: "The right of employers to organize in associations or groups and bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by any of the workers in any way whatsoever," and "The workers, in the exercise of their right to organize, shall not use coercive measures of any kind to induce workers to join their organizations, nor to induce employers to bargain or deal therewith."

(**) 41 Stat. L. 456, Section 301. Title III sets up a Railway Labor Board. Decisions of the Board contain significant expressions on collective bargaining, designation or representatives and majority rule. See particularly the Pennsylvania R. R. cases. This section of act subsequently repealed and replaced by the Railway Labor Act.

"First. It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements covering rates of pay, rules and working conditions, and to settle all disputes . . . ."

"Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided with all expeditions, in conference between representatives designated and authorized so to confer respectively by the carriers and by the employees thereof interested in the dispute."

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided for in their corporate organization or unincorporated association, or by any other means of collective action, without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other."(*)

The Norris-La Guardia Anti-Injunction Act shows clearly the influence of the language of the third provision of the Railway Labor Act, in its definition of what constitutes public policy,

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, therefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and contracts of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid of protection. Therefore, the following definitions and limitations upon the jurisdiction and authority of the courts are hereby enacted."(**)

On January 12, 1933 there was introduced in the Senate and the House of the 72nd Congress a bill the purpose of which was to stabilize the coal industry.(***) While this so-called Davis-Kelly Coal Stabilization Bill was never enacted into law, it was given extended consideration at hearings held before a specially appointed sub-Committee of the Senate Committee on Mines and Mining, from March to June, 1932. Section 5 of this bill is interesting in that it contains a very full statement of the principles later to be embodied in Section 7 (a) of NIRA. It reads in part,

---

(*) 44 Stat. L. 577.

(**) 47 U.S. Stat. 70 c. It will be noticed that the language "interference, influence or coercion", of the Railway Labor Act, has here become "interference, restraint or coercion". It is in this form that it appears in Section 7 (a).

(***) S. 2935 introduced by Senator Davis; H. R. 7536, introduced by Rep. Kelly. Congressional Record, Vol. 75, Part II, pp. 1758-1854.

"Licensees and their employees shall exert every reasonable effort to make and maintain agreements concerning wages and working conditions and to settle disputes in connection therewith; and in the making of such agreements the licensees may negotiate collectively through an operators' association or by representatives of their own choosing, and the employees shall have the right to deal collectively by representatives of their own choosing (without interference or coercion exercised by their employers). No such licensee becoming a member of a marketing pool or joint selling association shall make it a condition of employment that the employee shall not join a labor organization, but the right of the mine workers employed by such corporation to organize and maintain their own organization and to deal collectively through chosen representatives shall not be denied or abridged in any way whatsoever."(*)

The Black-Connery Thirty-Hour Bill was introduced into the 72nd Congress on March 10, 1933.(**) As reported out by the House Committee on Labor, with substantial amendments, it practically amounted to a new bill. In this revised version, Section 7 contains the essential core of both clauses (1) and (2) of Section 7 (a). It reads:

"No licensee shall transmit through the mails or transport, handle or receive in interstate or foreign commerce, and no person or carrier shall receive for shipment in interstate or foreign commerce any goods, articles, or commodities in the production of which any individual under the age of sixteen was employed, or in the production of which any worker who was a signatory to any contract of employment prohibiting such worker from joining a labor union or employees' organization, was employed, or any goods, articles, or commodities produced by any person whose employees were denied the right of organization and representation in collective bargaining by individuals of their own choosing."(***)

(*) 72nd Congress, 1st Session, Hearings Before Sub-Committee of the Committee on Mines and Mining on S. 2935, Part I, p. 2.

(**) S. 158, by Senator Black: H. R. 2867 by Representative Kelly. Congressional Record, Volume 77, Part I, pp. 116 - 173.

(***) House Calendar, Volume 19, 73rd Congress, 1st Session S. 158 Report Volume 24.

The 1933 amendments to the Bankruptcy Act also contain clauses directed against the "yellow-dog" contract. Under Section 77, it is provided that no judge or trustee having jurisdiction of railway property in connection with railroad reorganization shall

> "(c) . . . . change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act.
>
> "(p) . . . . deny or in any way question the right of employees . . . . to join the labor organization of their choice . . . . or interfere in any way with the organizations of employees, or . . . . use the funds of the railroad . . . . in maintaining so-called company unions, or . . . . influence or coerce employees in any way to induce them to join or remain members of such company unions. Or,
>
> "(q) . . . . require any person seeking employment . . . . to sign any contract or agreement promising to join or to refuse to join a labor organization, and if such contract has been enforced (previously) . . . . then the said judge . . . . shall notify the employees that said contract has been discarded and is no longer binding on them in any way." (*)

It has also been pointed out (**) that the cited 1933 amendments to the Bankruptcy Act, represent a reversion to the more vigorous approach of the Erdman Act. This Act had made it a misdemeanor for the employer to force the acceptance of a "yellow-dog" contract. In the La Guardia Act such contracts are simply made unenforceable. In the Bankruptcy Act Amendments judicial receivers are forbidden to utilize the "yellow-dog" contract in properties under their jurisdiction.

Decisions of the Courts

In the early years of the nineteenth century, American courts were wont to follow the English precedent of holding "combinations" of workers as constituting a criminal conspiracy and hence illegal.(***)

(*) 47 Stat. L. 1481. The Emergency Railroad Transportation Act of 1933, was approved on June 16, 1933, ten minutes after the NIRA; hence strictly it cannot be considered an antecedent. The Act (48 Stat. L. 211) requires, in Section 7a, railroads to observe the provisions of the Railroad Labor Act and, in Section 7e, those provisions of the 1933 amendments to the Bankruptcy Act quoted above.

(**) Paul F. Brissenden, "Genesis and Import of Collective Bargaining Provision of the National Recovery Act," Economic Essays in Honor of W. C. Mitchell, 1935, Chapter II.

(***) Philadelphia Cordwainers, 1806.

Since the decisive case of Commonwealth v. Hunt in 1842, (*) the courts have no longer utilized this doctrine to prevent organization among workers, although in a number of cases the courts have indicated what are the legal limits of the use of economic pressure by unions.

In the Adair Case, (**) the Supreme Court held it was unconstitutional to make it a criminal offense to discharge a man for union membership as had been done by the Erdman Act of 1898. In the Hitchman Case (***) it was held illegal for a union to instigate the workers in a non-union shop to compel their employer to unionize the shop.

In contrast to these decisions limiting the extension of organization, is the famous Tri-City Case, (****) in which a union's attempt to extend its organization was found to be entirely legal. In this case, Justice Taft stated:

> "Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They (labor unions) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court." (*****)

(*) 45 Massachusetts 111

(**) Adair v. United States, 208 U. S. ref. (1908).

(***) Hitchman Coal and Coke Company v. Mitchell, 245 U. S. 229 (1912).

(****) American Steel Foundries v. Tri-City Central Trades Council, 247 U. S. 184 (1921).

(*****) Ibid, p. 209

Another important decision was that handed down by the Supreme Court in the Texas and New Orleans R. R. Case. Here Chief Justice Hughes, rendering the opinion of a unanimous court, said:

> "The legality of collective action on the part of employers in order to safeguard free choice is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relative to rates of pay and conditions of work. Congress was not required to ignore this right of employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interference with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees instead of being an invasion of the constitutional rights of either, was based on the recognition of the rights of both." (*)

The courts have been slower in coming to the position of clause (2) of Section 7 (a) - prohibiting the "yellow-dog" contract - than of clause (1) which affirms the right to organize and bargain collectively. In the case of Coppage v. Kansas, (**) it was held unconstitutional for a state to make illegal the use of the "yellow-dog" contract. In the Hitchman Case, already cited, the inducing of a breach of a "yellow-dog" contract was also held illegal.

The opinion rendered in the Tri-City Case shifted the attitudes of courts towards the rights of labor, and thus we find in the Exchange Bakery Case, (***) that the New York Court of Appeals, refused to issue an injunction to prevent unions from inducing the waitresses of the plaintiff to break their promises to remain out of the union. The court held that such promises attached to employment contracts terminable at will, were lacking in consideration and did not constitute valid contracts.

(*) Texas and New Orleans R. R. Co. v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548 (1930). The R. R. Co. was charged by its employees with trying to replace the trade union by a company union, for collective bargaining purposes, thus violating Section 301 of Transportation Act (1920) and its later version in Section 2, of the Railway Labor Act of 1926, which provided for the free choice of representatives (see p. 17 above). The company, refusing to comply with restraining injunction, was ordered to disestablish its company union. This order was upheld by the Supreme Court, which held that the attempt to impose a company union constituted interference with free choice in designation of representatives.

(**) 236 U. S. 1 (1915).

(***) Exchange Bakery and Restaurant, Inc. v. Rifkin, 245 N. Y. 260, (1929).

The Norris-La Guardia Act in its Section 3 provides that such contracts are against public policy (*) and "shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief." The claim has been made that this Act is unconstitutional in the same way as the legislation concerned in the Coppage Case. But the distinction is that: whereas, the legislation concerned in the Coppage Case made insistence upon such contract a crime, the 1932 Act merely made such contracts unenforceable.

(*) For the Acts definition of public policy, see p. 12 above.

CHAPTER III - SECTION 7 (A) IN CONGRESS (*)

Presidential Message and Introduction of Bills

On May 17, 1933, President Roosevelt addressed a message (**) to the Congress, on "Reemployment and Public Construction", in which he presented a program of industrial regulation and public works construction, as a double attack on the problem of unemployment. On the same day, the National Industrial Recovery Act made its first appearance in embryonic form with the introduction of bills in the House (H.R. 5664) and Senate (S. 1712) to accompany the President's message. (***)

S. 1712 was introduced on the floor of the Senate by Senator Wagner, who asked "unanimous consent to introduce a bill to carry out the recommendations contained in the message of the President, just read". H. R. 5664, an identical bill, was introduced in the House by Mr. Doughton, as Chairman of Ways and Means Committee. Section 7 (a) of these two bills, read as follows:

> "Section 7 (a). Every Code of Fair Competition, agreement and license approved, prescribed or issued under this title shall contain the following conditions:

(*) The purpose of this chapter is not only to show the changes made in Section 7 (a) itself, but to indicate the forces and attitudes producing them. Hence, the remarks of witnesses and legislators, while carefully selected, are generously quoted and where of sufficient interest, are reproduced more fully as Appendices.

(**) 73rd Congress, 1st Session, House Document No. 37, Congressional Record, Volume 77, Part IV, p. 3549, p. 3603. The message reads in part:

> "Before the special session of the Congress adjourns, I recommend two further steps in our national campaign to put people to work.
>
> "My first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disasterous overproduction. . . .
>
> "The other proposal gives the Executive full power to start a large program of direct employment. A careful survey convinces me that approximately $3,300,000,000 can be invested in useful and necessary public construction and at the same time put the largest possible number of people to work."

(***) 73rd Congress, 1st Session, S. 1712 and H. R. 5664. Congressional Record, Volume 77, Part IV, pp. 3550 - 3611. These bills bore the following title: "To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes."

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing.

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any organization or to refrain from joining a labor organization of his own choosing, and

"(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other working conditions approved or prescribed by the President."(*)

House Committee Hearings

The bills were referred to the appropriate Committees: H. R. 5664, going to the House Ways and Means Committee, S. 1712, going to the Senate Committee on Finance. The House Committee held its hearings first, on May 18, 19, and 20, 1933; some forty-five witnesses appeared before it.(**) Of these only four or five concerned themselves with the labor aspects of the Act; the others dealt with its legal and financial aspects. Those whose remarks had reference to Section 7 (a) were Mr. Donald Richberg, Senator Robert F. Wagner, Mr. William Green and Mr. Henry I. Harriman.

Appearing as the first of these witnesses, Mr. Richberg(***) stated that while for many years he had been and was still serving as counsel for the railroad labor organizations, he was not representing any person or organization at the hearing, but was appearing merely as an individual at the Committee's request. Asked whether he thought the interests of employees were adequately protected by the bill, Mr. Richberg said:

"I think the organized labor groups themselves will have to answer that question. I do not want to indicate any committment as far as they are concerned. My personal opinion is that the success of this bill depends from start to finish upon the method of its operation and management; and with its operation in the spirit in which the Act is drawn, I think labor would be greatly

---

(*) 73rd Congress, 1st Session, H. R. 5664 and S. 1712. May 17, 1933.

(**) 73rd Congress, 1st Session, National Industrial Recovery, Hearings on H. R. 5664 before House Committee on Ways and Means. The witnesses may be classified as follows: seventeen business leaders, eighteen public officials, five private individuals, one economist, one labor leader, and one engineer.

(***) Ibid., pp. 86-89. These pages contain his testimony on various aspects of the Act, throughout which are scattered his references to matters of labor interest.

> protected. If we had to write a law that would compel people to do certain things, that would rigidly set down a code, of course, I would suggest much more definite and inflexible provisions, and undoubtedly the manager interested from the other side of industrial relations would also want a more inflexible organization. The whole purpose of this has been to leave that flexible, to leave it to a statement of principles, assuming that the law would be administered consistently with that spirit."(*)

Aside from the above comments and some general references to the subject of wages and hours, Mr. Richberg's testimony contains little comment on the labor sections of the bill. It is interesting that he made no direct reference to Section 7 (a), despite the fact that he had played a prominent part in its drafting.(**)

Senator Wagner spoke at some length and in great detail on the provisions of the proposed measure. (***) Referring to Section 7 (a), he said that it provided,

> "That employees shall have the right to organize and bargain collectively through representatives of their own choosing, which is an important protection for the labor organization and one for which I have been contending for a long while, both in legislative bodies and also as a practicing attorney", and
>
> "That no employee will be required as a condition of employment to sign an anti-union contract, that outlaws the so-called 'yellow-dog-contract' which I think we have already done when we passed the Anti-Injunction Act, which is now law. It is something which ought to be forever wiped out of our economic life. It is un-American."(****)

After the above remarks, Senator Wagner did not make any further comment on the subject of Section 7 (a), until the last few minutes of his testimony, when he was asked the following question

---

(*) Ibid., p. 75.

(**) In his recent book, Mr. Richberg indicates the active part he played in drafting the NIRA and earlier, the Railway Labor Act of 1926 and the Anti-Injunction Act of 1932. Donald Richberg, "The Rainbow", New York, 1936, pp. 49 - 58.

(***) Ibid., pp. 91 - 116. His initial statement (pp. 91 -98) is reproduced in full in Appendix II - A.

(****) Ibid., p. 98.

by Congressman Lewis:

> "Will you kindly turn to page 7 of the Bill, line 21, where it is provided -
>
> "'That no employee and no one seeking employment shall be required as a condition of employment to join any organization.'
>
> "In drafting that sentence, was attention called to the fact that there are many industries, generally called closed industries, where the employees are effectually organized, so that they can require membership in their union before an employer may hire a new man, and would not this clause have an effect upon the closed shop situation, where every labor union has been successful in securing such a condition?
>
> Senator WAGNER: "It may. There are different views about that particular provision, as Mr. Richberg knows, and I think he can explain it more clearly than I can because I still have some doubts about it as to whether there wor s ought to be in there."
>
> Mr. LEWIS: "There would be no purpose, of course, to lessen the strength of the unions in such cases."
>
> Senator WAGNER: "Oh, no! I think those who advocated this provision had in mind that while sometimes they would not exact the promise not to join a union, they will exact a promise to join some other organization within the industry, which may not be called a company union, but has the effect of it. I think that is what Mr. Richberg had in mind."(*)

Mr. William Green appeared as a witness immediately following Senator Wagner. With his appearance occured the first extended discussion, before the House Committee, of Section 7 (a). (**) Mr. Green opened his remarks by submitting two amendments, to clauses (1) and (2), of Section 7 (a), respectively. He suggested first, that to clause (1) should be added the following:

> "And shall be free from the interference, restraint, or coercion, of employers of labor of their agents, in the designation of such representatives or in self-organization or in other concerted activities for the

---

(*) Ibid., p. 116.

(**) Ibid., pp. 117 - 13[illegible]. Mr. Green's initial statement is contained in Appendix II - B.

> purpose of collective bargaining or other mutual aid or protection."

The amended clause (1) would then read:

> "That employees shall have the right to organize and bargain collectively, through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization of in other concerted bargaining or other mutual aid or protection."(*)

Mr. Green pointed out that this proposed amendment did not include any new legislation, but was taken verbatim from the declared public policy of the Government as set forth in the Norris-La Guardia Anti-Injunction law, which having been passed by an overwhelming vote of Congress was thus part of the law of the land.

The second amendment proposed by Mr. Green was that in clause (2) the words "company union" be substituted for the word "organization". The amended clause would then read:

> "That no employee and no one seeking employment shall be required as a condition of employment to join a company union, or to refrain from joining a labor organization of his own choosing."(**)

Mr. Green stated that it was the opinion of the representatives of the American Federation of Labor that this amendment would make clear the real meaning and purpose of this section of the act. Moreover, he believed that such a change would express the purpose that was in the minds of the committee who drafted the section.

> "Labor has been faced with this problem, that corporations set up their own company unions. These unions are the creatures of the corporation and function only at the will of the industrial corporation. Many workers are required, as a condition of employment, to join a company union. When they become members of that company union, then the corporation is secure, because it simply deals with itself.

(*) Ibid., p. 117.

(**) Ibid., p. 118.

We want to avoid that very thing.

"If the workers are permitted to join a labor union it ought to be a free, independent labor union, and not a union, or a so-called "union" through which a corporation may exercise full and complete control, not only of its own industrial affairs, but of the economic life and social life of the workers. The organization we have in mind is the company union, and we should like that this section of the Act be made clear in that respect."(*)

Mr. Green stated that if the Industrial Recovery Act was amended, as he was suggesting, labor would extend to the proposed legislation its complete and hearty endorsement. He earnestly urged favorable action upon these proposed amendments, each of which was regarded as of very great importance to labor.

Mr. Green was cross-examined on the proposed amendments by two members of the Committee, Congressman Lewis of Maryland and Congressman Treadway of Massachusetts. Mr. Lewis inquired whether the effect of the second proposed amendment would not be, to give recognition to a company organization which Mr. Green held to be not a bona fide union at all.

Mr. GREEN: "Of course, it exists as a fact."

Mr. LEWIS: "You think that lawmakers should give recognition to an institution which many of them regard as lacking in good faith and genuineness by leaving this clause in the Act? I want your opinion on that."

Mr. GREEN: "Well, we feel, Mr. Congressman, that by inserting the words 'company union' for the word 'organization' Congress will be setting forth the real purpose of that section which is to protect working people from being required to agree to join a company union as a condition of employment. As the Senator well says by putting that in it will, we believe, effectively outlaw the company union."(**)

Mr. Treadway asked Mr. Green whether these proposed amendments would secure the unqualified support of labor, to which Mr. Green replied in the affirmative. Although there had not been time to submit them to the proponents of the bill, he believed this would meet their

---

(*) Ibid., p. 116.

(**)Ibid., p. 122.

approval also. Questioned specifically, on this point, he said:

> Mr. GREEN: "I do not know, except that my good friend, Senator Wagner has said - and he is one of the authors of the bill - that amendments of this kind met his approval. I do not know whether he would be willing to say that now or not."
>
> Senator WAGNER: "Yes, I do."
>
> Mr. BROADWAY: "I just wanted to see whether it would meet the approval of the proponents to incorporate your suggestions in the bill."
>
> Senator WAGNER: "Speaking only for myself, I can say that it is perfectly satisfactory to me."
>
> Mr. BROADWAY: "You are sufficient of an authority so that we are willing to take your view of it."(*)

Mr. Green reverted once more indirectly to the content of his second amendment in the closing minutes of his testimony, when asked for certain information by a member of the Committee, Congressman Watson of Pennsylvania.

> Mr. WATSON: "You spoke of company labor organizations. What do you mean by the term 'company'?"
>
> Mr. GREEN: "I mean company union, a company union is an organization formed at the direction of the company and it is officered by someone connected with the company. It collects dues from the members."
>
> Mr. WATSON: "Is it generally adopted in America?"
>
> Mr. GREEN: "Not fully and completely, because labor generally will not accept it; but in places where labor is dominated and controlled, they force workers to become members as a condition of employment."(**)

Mr. Harriman, (***) who succeeded Mr. Green on the stand, made no ref-

---

(*) Ibid., p. 133.

(**) Ibid., p. 153.

(**) Ibid., pp. 153 - 154.

erence to Section 7 (a) whatever. In fact his only reference to the labor aspects of the bill appears to have been the following:

> Mr. SHALLENBERGER: "Mr. Harriman, I would like to get your point of view on one or two questions. As I remember, Senator Wagner made the statement that he thought this bill was primarily a labor bill, to restore employment, that that is the basic idea of the bill. The recovery of agricultural industry and manufacturing industry is essential before we can have a large return of labor employment, is it not?"
>
> Mr. HARRIMAN: " I think they come simultaneously."(*)

Report of House Committee

The House Committee on Ways and Means terminated its hearings on May 20, and on May 23 reported favorably on the bill.(**) Although not specifically mentioned in the Report itself, Section 7 (a) as it came from the Committee's hands, contained the two amendments that had been proposed by President Green. Section 7 (a) now read as follows:

> "Every Code of Fair Competition, agreement and license approved, prescribed, or issued under this title shall contain the following conditions:
>
> (1) That employees have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint or coercion of employees of labor, or their agents, in the designation of such representatives or in self organizations or in other concerted activities for the purposes of collective bargaining or other initial aid or protection;
> (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining a labor organization of his own choosing; and
> (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other

---

(*) Ibid., p. 142.

(**) 73rd Congress, 1st Session, H. Report No. 159 (to accompany H. R. 5755). The bill's number was changed from H. R. 5664 to H. R. 5755.

working conditions, approved or prescribed by the President."(*)

Section 7 (a) on the Floor of the House

H. R. 5755 had hurried consideration in the House. Debate was limited to eight hours and took place on May 25th and 26th. Only two members addressed themselves to Section 7 (a). Both indicated their approval of its purposes.

Congressman Kelly of Pennsylvania said:

> "Mr. Chairman, this would not be a measure for industrial recovery if it failed to deal with the workers in the industries and provide adequately for their just rights. I have heard it said that this is not the time to make any changes in labor relations, no matter how just those changes may be. The argument is that we should wait until this emergency is over before attempting to establish labor standards . . . . Nothing could be more illogical. This emergency is in part, due to the importance of fair wages and balanced hours of labor in maintaining prosperity in a machine age. Now is the best time possible to make sure that better methods will prevail in the future.
>
> "This measure undertakes to secure and preserve the right of collective action for those who invest their muscles and mind and blood and life in industry . . . . We are giving power to employers and employees to adjust these questions and ninety-nine times out of a hundred they will do it. Mutual agreements are always easier to make when each side knows the strength of the other and respects the other.
>
> "We have heard a great deal about the evils and excesses of organized labor. The enemies of organized labor have been largely responsible. They have forced unionists to spend most of their time and efforts to secure the right to act collectively . . . . Labor organizers have been fought by fair means or foul. They have had to deal with spies and face the attacks of a private police force. They have had to face black lists, injunctions and vicious obstructions. It is no wonder that their tactics could not be worked by soft speech and gentle hands.

(*) 73rd Congress, 1st Session, H. R. 5755, Report #159, May 23, 1933. p. 7, l. 16 - p. 8, l. 6. (amendments underlined)

> "Mr. Chairman, we are here frankly recognizing the right of workers to organize and bargain collectively. It is an inherent God-given right, and granting it without equivocation will put a solid foundation under the structure of industrial justice."(*)

Congressman Connery of Massachusetts made the following comment:

> "I certainly agree with the gentlemen. This bill will end ragged individualism by providing decent wages and out-lawing "yellow-dog" contracts and sweatshop conditions."(**)

The bill, H. R. 5755, passed the House on May 26th. The amendments to Section 7 (a) that had been incorporated by the Ways and Means Committee were accepted by the House - and no additional modifications were made. Section 7 (a) thus came from the House, carrying but two amendments - both of which had been proposed by William Green before the House Committee. The bill then went to the Senate Committee on Finance which had already begun hearings on its own bill.

Senate Committee Hearings

Hearings on S. 1712 and H. R. 5755 were held by the Senate Committee on Finance May 22, 23, 24 and June 1, 1933 (***) Some seventy-five witnesses appeared before the Committee, seventeen of whom had already appeared on the measure before the House Ways and Means Committee. (****)

Senator Wagner, appearing as the first witness, stated again his conception of the purpose of the bill in the following words:

> "The National Industrial Recovery Bill has as its single objective the widespread and permanent reemployment of workers at wages sufficient to secure comfort and decent living. This desired end is to be reached by a two-fold program, involving first, cooperative action within

---

(*) Congressional Record, Volume 77, Part 4, p. 4220.

(**) Ibid, p. 4360.

(***) 73rd Congress, 1st Session. National Industrial Recovery Hearings on S. 1712 and H. R. 5755, before Senate Committee on Finance.

(****) Compare table of contents of House and Senate Committee Hearings.

> industry encouraged by law and supervised by the President for the protection of the public and secondly, direct Government expenditures for public works."(*)

Besides remarking, in reference to 7 (a), in his recapitulation of the provisions of the bill, that

> " . . . . the interests of labor are securely guarded and advanced under the voluntary codes - in this manner, labor is protected, not only from the dangers of the greater collective strength employers might gain through their cooperative codes, but also from the wage depressing tendencies which curtail consumer demand and precipitate business decline and unemployment."

Senator Wagner made no further detailed explanation or defense of the section, as drafted.

Mr. Richberg, (**) the next witness, was subjected to repeated cross-examination by Senators Couzens and Borah as to the nature of the obligations on labor implied by Section 7 (a). Senator Couzens asked whether, granting the right and desirability of collective organization and bargaining, once a collective agreement had been reached, this did not place upon labor the responsibility of maintaining its contract, and not going on strike. The Senator wondered whether some such provision should not go into the bill. Mr. Richberg, while affirming the desirability of protecting labor contracts, said that he believed it unwise to insert such a provision in the bill.

Mr. Richberg was also questioned at some length by Senator La Follette as to the nature of labor participation and representation in the code making process. Mr. Richberg appeared to think that inasmuch as codes were to originate from management, and insofar as they dealt only with management problems, labor need not necessarily participate directly. Labor role was indicated by Section 7 (a), giving it the right to organize and bargain collectively,

> "which means that the employee would have in such an industry the right to bargain with management as to the terms or conditions affecting

---

(*) Ibid, p. 1.

(**) Ibid, pp. 22 - 34.

labor."

Senator LA FOLLETTE: "If you are drawing up a code, let us say to establish practices which shall be considered fair or unfair in the steel industry, do you not envision that labor would be represented in drawing up those codes, insofar as they relate to working practices, either fair or unfair in relation to employment."

Mr. RICHBERG: "I have this vision of it and that is that either labor will participate in the drawing up of such codes, or that labor will participate in the consideration as to whether such codes are fair and perhaps management will regard it as desirable to have labor participate at the first stage rather than the second -- it would be either a choice of labor participation in the original preparation or labor participation in the consideration of the codes."(*)

The belief that the proposed measure implied a dictatorial control of both industry and labor, is reflected in the examination of Samuel P. Bush, (**) a retired industrialist, who appeared to urge that some provision for the establishment of wage principles be included in the bill to effect a balance with Section 7 (a).

(*) Ibid, pp. 26 - 27. For Mr. Richberg's full testimony on this point, see Appendix II-C.

The issue raised is an important one. Labor's position would undoubtedly have been a stronger one had the first rather than the second method subsequently been chosen by the NRA. It is asserted that Section 7 (a) would then have merely defined the terms of operation of Section 7 (b), which it is claimed was the original intent of the Act. (See Annals article by Solomon Barkin, cited on p. 3 above).

Section 7 (b) reads: "The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of Section (3)."

(**) Ibid, pp. 160 - 162.

Mr. BUSH: "I have had long experience in industry and I would like to address myself to Section 7 . . . . If you are going to keep these provisions in here, there has to be one thing I can see that you add to effect a balance and that is to establish, to state in this measure, that the Administrator, the President of the United States, shall establish certain wage principles."

Senator CLARK; "Mr. Bush, if you had a dictator of industry and did not have some such provision as in Section 7 here, you have pure regimentation of labor, don't you?"

Mr. BUSH: "No, not necessarily at all. We all know there are some very foolish industrialists, and there are some very intelligent industrialists, too. The great mass of them are all right, and the great mass of labor is all right, too."

Senator CLARK: "I am in accord with that, but if you don't give the laboring class the right to collective bargaining --"

Mr. Bush: He has got that right now."

Senator CLARK: "Not if this bill is passed and we have a dictatorship. He won't have unless you put it in the Act. You will then have pure regimentation of labor."

Mr. BUSH: "I don't understand that this Act takes away the ability of labor to speak for itself."

Senator CLARK: "It does unless you put in in there."

Mr. BUSH; "I don't understand that at all."

Senator CLARK: "That is the way I understand it. You set up a dictatorship."

Mr. BUSH: "I understand that the Government through some agency is going to establish a minimum wage and that labor will have the same opportunity it has always had to ask for more than that minimum if conditions are propitious."(*)

Mr. James A. Emery, (**) representing the National Association of

---

(*) Ibid, pp. 160 - 162.

(**) Ibid, pp. 275 - 284. His remarks in some detail, pp. 281 - 283, are reproduced in Appendix II-C.

Manufacturers appeared before the Committee strongly opposing the power of regulation that would be conferred by the Act, and its centralization in the hands of the Administrator; he also questioned the Act's constitutionality. He further protested that while the employer's rights were not defined but left to the Administrator's discretion, labor on the other hand was given definite and specific rights under Section 7 (a).

> Mr. EDEN: "Thus while employers as such are assured of no protection in the discharge of their onerous obligations, but must place their trust wholly in the Administrator, it is sought to twist the pending legislation into a distinct effort to mold the employment relations of the United States into a single form, to the manifest advantage of a particular form of organization. . . . The trade union is a recognized part of our social life, yet at times it frankly sets itself up as a separate and distinct governing agency to control those who believe they can best advance their own interests then through other forms of organization and relationship."(*)

Mr. Emery objected that the measure as drafted left it to the discretion of the Administrator to transform the whole measure into an exclusively Federal control of employment relations. He maintained that at least three times as many employers as dealt with trade unions, operated under employee representation plans, and it would be unwise to adopt a program that would create the impression of seeming to disrupt "satisfactory existing relations" at a time when it was most important that "good will and understanding" should prevail in employment relations.

> "Finally, if this Committee is of the opinion that a statement of employment relations is an essential condition of codes, and agreements, we submit that, as fair minded men, it should be stated in terms which not only fairly recognize the equal and mutual rights both of employer and employee - of those who desire to refrain from any particular form of Association as well as those who desire to associate; but which recognize no narrow and exclusive relationship but, as is constitutionally required, every form of legitimate employment relations mutually satisfactory to the parties...."(**)

(*) Ibid, p. 384.

(**)Ibid., pp. 384 - 385. Minor changes in punctuation have been made here for greater clarity. Compare Appendix II-D.

Senator WAGNER: "Are that is your opposition to this bill, is it not? Do you not think labor is receiving too great protection here?"

Mr. EMERY: "On the contrary, I want it to receive every reasonable protection, but I want that expressed in terms that are fair to employer and employee and not a one-sided bargain here that attempts to drive our employment relations into one form."

Mr. Emery then proposed that Section 7 be deleted, and offered as a substituted an amendment to be made to Section 7; which read as follows:

"7 (c) -In every Code of Fair Competition in any trade or industry or subdivision thereof approved by the President under either subsection (a) of subsection (b) of this section (b) provisions for the protection of employees shall include the following conditions:

"(1) That employers and employees shall have the right to organize and bargain collectively in any form mutually satisfactory to them through representatives of their own choosing.

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any legitimate organization, nor shall any persons be precluded from bargaining individually for employment."(*)

Mr. Emery believed that his amendment would offer the desired protection for labor, and would protect adequately the employer. Moreover, he stated, it would also guarantee the right of the worker to bargain individually, a right which, he claimed, could not be taken away from the American people. Senator Wagner in replying denied that there was anything in Section 7 that deprived the worker of the right. Senator Lore, attempting to clarify the issue, asked Mr. Emery the following question:

Senator LORE: "Is this your point, that there are certain rights of labor guaranteed in this bill and not entrusted to the discretion and power to the Administrator, while on the other hand there are certain fundamental rights of the

---

(*) Ibid, p. 93.

employers, not expressly guaranteed, but are committed to the discretion and power of the Administrator?"

Mr. HENRY: "Exactly."(*)

(*) Ibid, p. 289.

In concluding his testimony, Mr. Emery cited the British Trade Union Acts of 1927, as showin. the "fair way" of regulating industrial relations.(*)

Mr. E. L. Michael (***) representing the Virginia Manufacturers Association, appeared before the Committee, professing sympathy with the objectives of the Act but stating his opposition to certain provisions enacted by the House. Referring to Section 7 (a), Mr. Michael asserted that "the provisions of this section place unreasonable and impossible prohibitions upon the employer". He maintained that the net results of the Section would be to destroy,

> "....that confidence (which) is the essential factor for reviving the wheels of industry - confidence that employment relations existent at the time this Act takes effect, mutually and satisfactorily established by and between employers and employees, will not be unduly disturbed except by mutual agreement - confidence that such relations will not be destroyed by agitation and influence assumedly required by Federal or State provision and authority. No managements of industry will willingly be deprived of its right to advise freely with its employees as to the minimum wage and the maximum hours and all other conditions of work and production...."(****)

Mr. Michael argued that such existing satisfactory relationships would be disturbed by Section 7 (a), through its interpretation by Government Agencies on the one hand, and by labor organizations on the other. As regards the former, he said:

> "It is common knowledge that in the Federal and State Labor Departments the words 'collective bargaining' have been universally interpreted to mean collective bargaining by and through the organizers

(*) The portions cited were Section 6, clauses (1) and (2) reading as follows:

> "(1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any conditions, upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.
>
> "(2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration of acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union."(**)

(**) Ibid, p. 291

(***) Ibid, pp.397 - 398 For expounded remarks, See Appendix II - E

(****) Ibid. p. 379

of representatives of labor unions, whereas, the more collective bargaining is practiced every day between employees and employers in thousands of individual establishments.... Based upon such observations and experience there would immediately be established the influence of the Federal and State Governments toward the compulsion of unionization of the vast majority of employees in industry, who are not at present unionized, and it would be defunct in many cases for them to continue their expressed and demonstrated preferences and actual existing practices of making mutually satisfactory agreements with employers." (*)

In regard to the interpretation of Section 7(a), made by representatives of organized labor, Mr. Michael said:

"But in the interpretation of this Section as above reputed to labor officials, (**) it is contemplated by them that all employees in industry must organize into labor unions, whose representatives propose to negotiate and conclude with representatives of given trade industries, agreements as to hours, wages, and working conditions for that industry, which plan in our judgment is impossible of successful consummation. If such a plan were physically possible or successful, we would certainly observe more than 7-10 per cent of employers in gainful occupations belonging to labor organizations today."(***)

Mr. Michael concluded his comments by asking either the elimination of Section 7(a) or its modification so that employees and employers would be given "equal rights". He recommended that in clause (3) of Section 7 (a) provision should be made whereby employees as well as employers should comply with the stated conditions.

Mr. Charles R. Hook, (****) president, American Rolling Mill Company, appeared before the Committee to present the viewpoint of the iron and steel industry.

"Mr. Chairman, I do not presume to represent any group except the corporation of which I happen to be president. However, from numerous conferences which I have had with large numbers of executives of the steel industry, I am quite confident that I represent the viewpoint which is very general in industry today.

(*) Ibid p. 379.

(**) See footnote to Mr. Lamont's testimony, p. 54 below.

(***) 73rd Congress, 1st Session National Industrial Recovery Hearings on S. 1712 and H.R. 5755, before the Senate Committee on Finance p. 340

(****) Ibid pp. 388 - 390. See Appendix II-F for testimony in full.

"We have some 7,000 men on our payroll. Therefore I think I represent a fair number of employees."(*)

Mr. Hook stated that he could confidently say that the steel industry was anxious and willing to do everything in its power to cooperate with the President in his efforts to increase employment. But, he felt it was the obligation of every citizen to call attention to the presence or absence of provision in the Act that would interfere with a successful attainment of the desired goal. In this regard it would be unfortunate, he urged, if any language in the bill would permit of such an interpretation as would endanger "the happy relationship which has existed between employer and employee in this country during the past ten years."

Mr. Hook suggested two amendments to Section 7 (a). Of those which referred to 7 (a), the first proposed to replace the amendment to clause (1), namely:

> "and shall be free from the interference, restraint or coercion of employers of labor, or their agents in the designation of such representatives or in self organization or in other concerted activities for the purposes of collective bargaining or other mutual aid or protection."

by the following clause,

> "and each employer and his employees shall be free from the interference, restraint or coercion exercised by either party or by non-employees as against either, in the designation of such representatives or in self organizations or in other concerted activities for the purpose of collective bargaining."

In favor of this proposed change, Mr. Hook argued that clause (1) with the Green amendments carried a prohibition against the interference by industry with the employee right of choice, but there was no prohibition on those who were not employees from interfering with the "free exercise of the employees" of an establishment...." As second amendment, Mr. Hook indicated he wished to revert to the original form of clause (a) before it was amended:

> "I would strike out the two words 'company union' and ... insert in place thereof the word 'organization' because there is no reason why the words 'company union' whatever that may be, should be retained, and any other organization left out."

(*) Ibid, p. 388. Some difficulty is caused for the careful editor by Mr. Hook's use of the word "represent" three times in this quotation, each with a somewhat different emphasis. Presumably he means by his statement "I represent a fair number of employees" that he is a large employer. Yet in the paragraph immediately succeeding the quoted excerpt, he goes on at some length to describe to the Committee that he started as a workman and came up through the ranks. The reader is left to decide whether he was trying to suggest that therefore he "represented" also the viewpoint and interests of his employees. Compare his testimony, Appendix II-F

It is quite clear that the net effect of adopting the changes proposed by Mr. Hook would be to negate both of the amendments that had been proposed by Mr. Green, and that had been accepted by the House Committee and favorably passed on by the House itself. The Senate Committee on Finance apparently paid no attention to these suggested changes.

The position of the iron and steel industry was clarified on the following day with the appearance of Mr. Robert P. Lamont(*) on behalf of the American Iron and Steel Institute, representing about 95% of the country's steel industry. Mr. Lamont stated that due to uncertainty as to the meaning of the labor clauses of the proposed measure, especially as modified by the House and given publicity in a statement by labor leaders, the iron and steel industry felt called upon to state its position clearly with regard to these sections.

> "The industry stands positively for the open shop, it is unalterably opposed to the closed shop. For many years it has been and now is prepared to deal directly with its employees collectively on all matters relating to their employment. It is opposed to conducting negotiations regarding such matters otherwise than with its own employees; it is unwilling to conduct them with outside organizations of labor or with individuals not its employees. The industry accordingly most strongly objects to the inclusion in the pending bill of any provisions which will be in conflict with this position of the industry, or of any language which implies that such is the intent of the legislation. If this position is not protected in the bill, the industry is positive in the belief that the intent and purpose of the bill cannot be accomplished."

To Senator Reed's question as to whether in fact, the amended clauses did interfere with the open shop, Mr. Lamont replied,

> "There is some question about it. It is uncertain. It is not quite clear just what the recent amendments do contemplate."

> Senator Reed: "It gives the employee a right to be consulted through representatives of his own choosing. Isn't that perfectly consistent with your open-shop policy?"

> Mr. Lamont: "Yes. That statement by itself is; yes. May I just read the section to which I refer?

> 'The announcement also disclosed that the Federation will use the industry recovery bill as occasion for an organizing campaign. Mr. Green will outline a plan to the meeting for a quick and intensive drive through the country, so that workers might be better prepared, as it was expressed, to demand consideration in the industrial agreements contemplated.

(*) Ibid. pp. 794 - 795. See Appendix II-6 for his testimony in full.

> 'The attitude taken today by the two organizations were in marked contrast to the statements made by Mr. Green and Henry I. Harriman, President of the Chamber of Commerce of the United States when they joined hands before the Ways and Means Committee ten days ago in support of the legislation.'

> "The fear is that that would be more disturbing to industry than helpful." (*)

Mr. John L. Lewis (**) appeared before the Senate Committee in his capacity both as President of the United Mine Workers of America and Vice-president of the American Federation of Labor. Mr. Lewis' statement on behalf of these organizations was one of emphatic support of Section 7(a). The only labor representative to appear before the Committee, his remarks are here quoted at some length.

> Mr. Lewis: "Mr. Chairman, and gentlemen of the Committee, I appear here to sum up briefly the position of organized labor in America with regard to this industrial recovery bill. We stand squarely behind Section 7, as reported to the Senate in the House bill, as amended by the Ways and Means Committee. It will place upon the statute books a good sole declaration in the form of a statute that will give to the workers of this country some rights the same rights now enjoyed by the employers and the corporations the right to organize, and to bargain collectively for their labor and to be represented by representatives of their own choosing, in precisely the same form gentlemen, that the American Iron and Steel Institute is represented before this Committee this morning by a former distinguished Secretary of Commerce, Mr. Lamont as representative of their own choosing."

Mr. Lewis stated to the Committee that labor's demand for the right to organize, was asking for the same right granted to employers to form themselves into trade associations. He charged employers who had appeared before the Committee to object to granting such rights to labor with "hypocrisy".

> "Organized labor in America wants the right to organize, if it wants to organize. Every employer has the right to form these trade associations.....and yet distinguished gentlemen have the effrontery to come before this Committee and propose that, after securing these privileges for themselves, they will deny to the workmen engaged in those industries the same rights and privileges which they arrogate to themselves.

(*) As will be seen from the context, Mr. Lamont was referring not to a section of the Act, but to a statement, presumably from the press, which he had before him, and from which he read. Presumably this is the statement to which reference was also made by Mr. Michael.

(**) Ibid, pp. 404 - 407. See Appendix II - 6H - for testimony in full.

"Labor in America is tired of such hypocrisy; it is tired of being dealt with in such a manner by men who proclaim the present labor relationship, as was done this morning by a representative of the steel industry here, as a happy state of affairs existing, and a happy condition. A man who can say that labor relations in the last ten years in America were happy as an optimist that dwells in a realm to which I cannot ascend.

Mr. Lewis claimed that if American labor was to make its contribution to the recovery program it needed cooperation, rather than opposition from the employers.

"Labor in America, organized labor, is trying to maintain an equilibrium of our Government in this time of stress and in order to accomplish that task it is entitled to the friendly cooperation and support of every American who believes in maintaining that equilibrium so that our Nation might endure, and it cannot be maintained by following the legislative course of action suggested here by large employers of labor in the Iron and Steel Industry, and National Association of Manufacturers to keep from labor those rights which the masters of industry arrogate to themselves.

In closing, Mr. Lewis indicated labor's endorsement of the Recovery Act, and its intention to fight any emasculation of Section 7 (a).

"Gentlemen of the Committee, I must not take more time. I appreciate your haste. I merely want to say in conclusion that organized labor in America, speaking through the American Federation of Labor and its subdivisions, has endorsed the provisions of this legislation. They have endorsed it because they think there is an emergency in the Nation that is hourly growing worse. There is a grave necessity for the stabilization of our economic and industrial processes. There is an imperative necessity for setting up machinery under the government for economic coordination and regulation of processes of industry and labor relationships.

"Labor will protest any emasculation of Section 7, and it says furthermore that industry has nothing to fear in a modern rationalized labor relationship such as can be set up and administered under the provisions of this Act."

Senate Committee Report

The Senate Finance Committee Hearings concluded on June 1, 1933. The Committee reported favorably to the Senate on June 5th. (*) In its report the Committee indicated the amendments it had made to Section 7 (a), as it appeared in the House Bill:

(*) Congressional Record, Volume 77, Part 5, p. 4996.

"Your Committee has inserted a proviso in Section 7 (a) indicating that it is not intended to compel a change in existing satisfactory relationships, between employees and employers. A further condition has been imposed that no employees and no one seeking employment shall be required, as a condition of employment, to refrain from organizing or assisting a labor organization of his own choosing. The House Bill is limited to refraining from 'joining' a labor organization of his own choosing."(*)

With the amendments proposed by the Senate Finance Committee, Section 7 (a) at this stage read as follows: (Amendments underlined)

"Section 7 (a). - Each code of fair competition, agreement and license approved, prescribed or issued under this Title shall have the following conditions:

'(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Provided, That nothing in this Title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm or corporation shall have the right to organize for the purpose of collective bargaining with their employer as to wages, hours of labor, and other conditions of employment;
(2) That no employee and no one seeking employment shall be required, as a condition of employment, to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing;
(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.'" (**)

(*) 73rd Congress, 1st Session, Senate Report No. 114, p. 3.

(**) 73rd Congress, 1st Session, Calendar No. 130, H.R. 5755 (Report No. 113) p. 10, l. 4 - p. 11, l. 3. cf. Appendix I-B, 8. It will be noticed the Committee suggested two minor changes in language. The underlined words replace those crossed out.

The amendment to clause (1) had been proposed by Senator Clark of Missouri; the amendment to clause (2) by Senator Walsh of Massachusetts. It will be seen therefore that while the Committee took no action on the amendments proposed by Mr. Emery, Mr. Hook and Mr. Michael, it did insert a proviso intended to meet the objections of these gentlemen that Section 7 (a) as passed by the House, would cause the disruption of "existing satisfactory relationships between employers and employees." Senator Walsh's amendment strengthened Section 7 (a) somewhat from labor's viewpoint; Senator Clark's amendment strengthened the employer's position. The former was accepted without comment; the latter provoked extended debate, which resulted in its rejection.

Debate in the Senate

The Senate debated the NIRA measure on June 7-9. (*)

The two amendments to Section 7 (a) proposed by the Finance Committee had been voted upon and adopted, when Senator Norris asked for a reconsideration of the vote adopting the first of the two amendments given above - the "existing satisfactory relationships" amendment - on the grounds of having been unavoidably absent during the vote, although he had been watching for the amendment throughout the day.

Senator Norris expressed the belief that this amendment should be rejected. Referring to his earlier experience on the Judiciary Committee which had under consideration the Anti-Injunction Act, he stated that his committee had found that one of the greatest evils it had to provide against was the so-called "company union". The intent of the present amendment as he interpreted it, was to legalize such company unions.

> "This particular provision in the Bill, Section 7, reestablishes, almost in the identical language of that Bill, the right of employees to organize in unions of their own without any coercion of and kind from any source. However, it adds a proviso which I think comes very near to destroying, if it does not entirely destroy, the effect of the language which precedes it. This is the proviso that I am seeking now to strike out. I have no fault to find with the language which precedes it, but the proviso, after giving labor the right of self organization, the right to be represented in disputes by an organization of its own choosing, then imports this language into the bill;
>
> > "'Provided that nothing in this Title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm or corporation, except that the employees of any particular plant, firm or corporation shall have the right to organize for the purpose of collective bargaining with their employer as to wages, hours of labor and other conditions of employment.'

(*) The debate is reported in Congressional Record, Volume 77, Part 6, variously, between p. 5131 and p. 5454. The debate on the existing satisfactory relationships (pp. 5279-5284) is reproduced in Appendix III.

"That looks fair on its face, Mr. President; I think if we were trying to accomplish what, at first blush would seem is sought to be accomplished, all we would have to do would be to strike it out as it is already in the preceding wording. . . . I think the proviso is a direct blow at organized labor."(*)

Senator Nossis' attack on the amendment found immediate support in Senator Costigan who, stating that he shared the "critical apprehension of the able Senator from Nebraska", asked whether the language of the proviso might not be interpreted as affirming that all existing relationships were, in fact, satisfactory.

Senator Clark, the original proponent of the amendment, now rose in its defense:

"Mr. President, I should like to say to the Senator from Nebraska that, in my opinion, this proviso does not have any such effect as he is attributing to it. The proviso was adopted by the unanimous vote of the committee. Mr. Richberg, one of the authors of the Bill, well-known as one of the leading labor lawyers and a representative of labor unions, was present and not only accepted the amendment but he said he thought it was very beneficial. . . . General Johnson, who has been designated as the Administrator of the Bill, was present and said that he thought the addition of the proviso would be most beneficial, and that he considered it an exceedingly constructive amendment."(**)

This defense drew from Senator Wheeler the following comment:

"Mr. President, I concur in the statement made by the Senator from Nebraska with reference to the proviso. I am utterly amazed to hear it stated that Donald Richberg, the attorney, had said this amendment would be satisfactory to labor. As a matter of fact, if the amendment is adopted, labor gets nothing under this section of the Bill because, as the Senator from Nebraska has declared, the laboring men who belong to a company union do not dare to say their souls are their own. They would not dare to come before any committee of the Congress of the United States and say to that committee that conditions were not satisfactory - that labor conditions in their particular industry were not satisfactory."(***)

(*) Ibid, p. 5279

(**) Ibid, p. 5280

(**) Ibid, p. 5280

Senator Wagner was the next to rally to the support of Senator Norris:

> Mr. WAGNER: "The words employed are 'existing satisfactory relationship'. The word 'relationship' is an all-embracing word and includes hours of labor, wages, methods of employment, etc. I fear, and the more I reflect the more the fear grows, that it may be regarded as a nullification of the other provisions of the Bill which outlaw the 'yellow-dog' contract."
>
> Mr. WHEELER: "Why, of course."
>
> Mr. WAGNER: "This may be a legalization of that contract. I am not sure about it, but that is my apprehension."(*)

Senator Clark's citation of Mr. Richberg as having approved the proviso, made that gentleman the center of the discussion on the Senate floor for some minutes. Senator Wheeler, having expressedhis astonishment that Mr. Richberg, as representative of labor, could have approved it, Senator LaFollette rose to correct the statement that Richberg had appeared before the Committee as a labor representative, inasmuch as Richberg was not then acting in a representative capacity. Senator Clark replied that in quoting Mr. Richberg he had cited him as a leading labor lawyer who spoke from the viewpoint of labor. At this point, Senator Long joined in to say that while it was true Mr. Richberg had rendered notable service to labor as an attorney before the Interstate Commerce Commission, the present matter was, he believed, outside his experience. Senator Wheeler repeated his amazement that Mr. Richberg, as an able lawyer could have approved this proviso, and concluded that the only explanation was that Mr. Richberg had not given the matter careful thought and consideration.

Senator Long indicated his opposition to the proviso, deeming it a legitimization of the company union; in the following words:

> "I happen to know, and I think some of us know who understand trade unions, that the most iniquitous practice we have had to contend with is the company union. It is an organization that is set up to prevent a union that is not controlled by the company.... If we are going to attempt to safeguard the labor union let us not put a spider in the soup and make impossible the very thing that we are trying to accomplish." (**)

The progress of the debate found Senators Costigan, Wagner, Wheeler, Long, Robinson of Indiana and Borah rallying to the support of Senator Norris' opposition to the "existing-satisfactory-relationships" clause. Senators Clark, Hastings and King defended the amendment. The Norris group opposed it on a number of grounds; that it would make desirable labor changes difficult, that it would strengthen the company union, that it would tend to perpetuate existing "yellow-dog" contracts, and that it

(*) Ibid. p. 5280
(**) Ibid, p. 5281

really would give labor little or nothing. Senator Wheeler delivered some forceful remarks on this score.

> Mr. WHEELER: "It would seem that the minute we seek to put these codes into operation for the purpose of getting better conditions for labor, for the purpose of getting better wages and shorter hours or anything of that sort, we then provide that 'nothing in this title shall be construed to compel a change in existing relations.' If that language remains in the bill, labor gets nothing whatsoever out of the bill. Men who are working for a company and who belong to company unions, particularly, where conditions are bad, dare not go before any committee, dare not go before any organization or any body and say 'we want shorter hours or we want to do this or that'. They will be compelled by their employers to go before committees and say conditions are satisfactory.
>
> "We have had examples of that before congressional committees, where companies would bring their employees before the committees, paying their expenses and where the employees would say to the committees that conditions were absolutely all right, that they wanted this or that, when we know as a matter of fact that they were not their own agents but were merely speaking at that time for the company which they represented, because they knew if they did not do it, they would be put out in the streets and their wives and children would have to go without food and without clothing.
>
> "Let us not try to fool the working men of the country by putting in a provision of this kind. Either we mean to better their conditions or leave them just as they are today. If we mean to better their conditions, then let us reject this amendment. If we mean to leave them in sweat shops and work them ten and twelve hours a day, then leave the amendment in the bill. But do not go back and tell your constituents that you voted to leave the provision in the bill because you thought you were voting for the rights and interests of American labor. . . I submit that this section, if we really want to protect labor, should be stricken from the bill."(*)

Senator Hastings remarks were addressed more to the interest of the Act as regards labor, rather than to the amendment itself. He appeared to believe that the proposed measure would exercise an insufficient control over labor as compared to the close control to be maintained over employers.

(*) Ibid p. 5281

Senator King disagreed with Senator Norris that the amendment would vitiate the objectives of Section 7(a) and destroy the rights of labor. On the contrary, he argued, the amendment was intended for the further protection of labor.

> Mr. KING: "It was my understanding when the amendment was offered in the committee that it was for the purpose of affording protection to labor and to restrain efforts that might be made by employers to interfere with employees. It was designed also, as I understood, to respect conditions where the relation between the employee and employer was entirely satisfactory. The section as a whole, including the amendment now under consideration, properly interpreted as I believe, is designed to permit employees to organize and bargain collectively through representatives of their own choosing and further to provide that they shall be free from interference, restraint or coercion upon the part of their employers or any of their agents or any other person. . . . Under this provision, it is obvious that if a plant is unionized, the employer may not interfere with such union organization or restrain or coerce in any way the members of such union. The employees are free to maintain their union, free from any interference of any kind at the hands of the employer. The amendment also provides that the employees shall have the right to organize for the purpose of agreeing upon wages, hours of labor and other conditions of employment. In other words, the whole spirit of the section, as amended, as I interpret it, is to afford the greatest possible protection to labor and to give employees unrestrained and unrestricted right to organize and to collectively bargain as to wages hours of labor, etc."(*)

This is a rather extraordinary statement. As the preceding pages have suggested, the amendment originated as a concession to the representatives of industry who were uneasy about the implications of Section 7 (a). Yet Senator King would have had it appear that it had been offered for the greater protection of labor, against the interference of employees. But Senator Norris and his associates would seem to have made it clear that such protection as the amendment might afford, would be the protection of company unionism only; thus destroying in large part the intent of Section 7 (a) as seen by organized labor.

Senator Robinson of Indiana joined forces with the Norris group, inquiring whether it would not be the net effect of the committee amendment to legalize the "yellow-dog" contract. Senator Wheeler did not think so, but Senator Norris did.

(*) Ibid., p. 5282

Mr. MORRIS: "Mr. President, it seems to me perfectly clear that it might be so used if there is an agreement now existing with a company union that has any kind of a contract, and they will say it is satisfactory, which they will, and especially in these times when to lose a job of most any kind means starvation for the family. It may be the means, where one exists now, of continuing a 'yellow-dog' contract."

Mr. ROBINSON of Indiana: "That is precisely what I was getting at. It would permit coercion to be applied by the employer in times like these which would simply, in the net effect, mean legalizing the 'yellow-dog' contract."(*)

Senator Bone was the last speaker to speak upon the amendment. He, too favored its rejection.

Mr. BONE: "Mr. President, from a somewhat lengthy experience with organized labor, as counsel for a labor organization, I am compelled to agree wholly with the Senator from Nebraska (Mr. Norris) and with the remarks just made by the Senator from Montana, (Mr. Wheeler). . . . It seems to me the language in the bill, aside from that in italics which is the committee amendment - is ample to protect any reasonable employer and I think it is going to be a tragic blunder if we, in the enactment of so-called 'progressive legislation' make its apparent to labor all over the country that we are now trying to hamper these organizations which so far, have been the only bulwark of labor in maintaining decent standards of labor and decent working conditions. For that reason, I am wholly in sympathy with the effort of the Senator from Pennsylvania to strike this provision out ... I do not speak idly about this. I have had long years of experience with the problems as attorney for these groups, and I know the disadvantage under which labor works all the time, and in these tragic and trying times it is going to be infinitely harder for labor to get a square deal because of the economic pressure which compels them to stay on the job whether conditions are fair or not."(**)

Senator Bone's plea concluded the discussion on the proposed amendment, which was then put to vote. The amendment was defeated by a vote of forty-six to thirty-one with nineteen non-voting.(***)

(*) Ibid p. 5283

(**) Ibid, p. 5285

(***) Ibid, p. 5304. Inasmuch as the distribution of votes gives a rough index to the way the Senators stood on the trade union company union issue, it is reproduced here: YEAS: Austin; Bailey; Bankhead; Barbour; Barkley; Carey; Clark; Dickinson; Dieterich; Fess; George; Goldsborough; Gore; Hale; Harrison; Hastings; Herbert; Hess; Keyes; King; Lewis; Logan; Metcalf; Patterson; Reed; Robinson, Ark.; Shepperd; Steiwer; Stephens; Vandenberg; White. Nays: Adams; Ashurst; Bachman; Black; Bone; Bratton; Brown; Bulkley; Byrnes; Capper; Connally; Coolidge; Costigan; Cutting; Dill; Duffy; Erickson; Hatfield; Hayden; Johnson; LaFollette; Lonergan; Long; McAdoo; McCarran; McGill; Murphy; Neely; Norris; Pope; Overton; Reynolds; Robinson, Ind.; Russell; Schall; Shipstead; Smith; Thomas, Utah; Thompson; Trammell; Tydings; Van Nuys; Wagner; Walsh; Wheeler. NOT VOTING: Borah; Bulow; Byrd; Caraway; Copeland Couzens; Dale; Davis; Fletcher; Frazier; Glass; Hendrick; McKellar; McNary; Norbeck; Pittman; Thomas, Okla.; Townsend; Walcott.

Following immediately upon the rejection of the "existing satisfactory relationships" amendment, Senator Wheeler proposed another amendment, the purpose of which was to put an end to the practice of strike-breaking. The proposed amendment, which was to appear as clause (4) of Section 7 (*), reads as follows:

> "And (4) that employers shall not transport, or assist in transporting employees from one State, county, city or place to another for the purpose of taking the place of men out on strike."

In explanation of his proposed amendment, Senator Wheeler had the following to say:

> "Let me say to the Senate that the reason why I propose to add this clause is because of the fact that when the Senate ordered the investigation, for instance, upon which the Senator from New York was a member, into the coal strike in Pennsylvania, we found the situation to exist: Immediately when there was difficulty between the men and their employers, the great coal companies went down South and brought trainloads of negroes up to Pennsylvania, shipped them in by box cars and kept them there, living almost in slavery, one might say, and taking the place of those white men; in other words, using those negroes merely as strike-breakers. Of course, when the white men returned to work, as they did, agreeing after a while with their employers, those negroes were thrown out of employment and out of the community.
>
> "The purpose of this amendment is simply to prevent that sort of practice by great organizations of wealth throughout the country. In communities where such practices are indulged, they only breed disorder and trouble; and it seems to me when organized capital is going to get the opportunities and the privileges which it will get under this proposed law, that it ought to be willing to make a part of its code the agreement that in the event it has a disagreement with its employees and the employees cease to work temporarily, it will not bring into that community swarms of strike-breakers from outside communities. The bringing in of strike-breakers has been the chief source of bloodshed and riot in pretty nearly every community where there have been labor troubles. For that reason, Mr. President, I hope this amendment will be adopted."(*)

(*) Ibid, p. 5284

Despite Senator Wheeler's earnest plea in its support, this amendment was likewise rejected. (*)

A little while later, Senator Byrnes of South Carolina offered an amendment, the intent and implication of which are of great interest. It was intended to arrest the trend of unregulated increase of work assignment in the textile industry, a problem more familiarly known as the "stretchout". Senator Byrnes' amendment proposed the introduction of the words "maximum machine load of employees" to be inserted in clause (3) of Section 7 (a), which as amended would read as follows:

> "Section 7 (a) - (3). That employers shall comply with the maximum hours of labor, minimum rates of pay, maximum machine load of employees and other conditions of employment approved or prescribed by the President,"

the same phrase to be inserted in the appropriate place in Section 7 (b). The amendment was accepted with various other amendments, and the bill passed the Senate on June 9 and then went into conference.

Section 7 (a) as amended and passed by the Senate, and as it came into conferece, read as follows: (the numbers in brackets are the numbers given by the Senate to its specific amendments, the underlined words replacing those crossed out)

> "Section 7 (a). Every code of fair competition, agreement and license approved, prescribed or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers or their agents in the designation of such representatives or in (19) self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;
> (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, (20) organizing or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, (21) maximum machine-load of employees and other (22) conditions of employment approved or prescribed by the President." (**)

(*) Ibid p. 5284

(**) 73rd Congress, 1st Session, H.R. 5755. In the Senate June 9, p.11, l.9 - 21. Cf. Appendix I - B. 10.

From Conference to Law

In conference, Senate amendments (19), (20), and (22) were retained, but amendment (21) was dropped.(*)

The National Industrial Recovery Act went from conference to the President of June 14, and was approved by him at 11:55 A.M. on June 16, 1933. In its final form, as it became part of the law of the land, Section 7 (a) read:

> "Section 7 (a). Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection: (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."(**)

(*) 73rd Congress, 1st Session, House Report No. 243 Conference Report, p.1 June 10, 1933, Amendment (21) which was dropped in conference, was, it will be recalled, Senator Byrne's attempt to regulate the stretch-out. In view of subsequent developments the elimination of this amendment appears to have been a serious mistake. The failure to satisfactorily adjust this problem led to continuous friction between textile employers and textile workers culminating in the textile strike of September 1934.

(**) Public - No. 67 - 73rd Congress 48 Stat. L. 195-210, Chapter 90

CHAPTER IV

INTERPRETING SECTION 7 (A)

The preceding chapter has shown the fortunes of Section 7 (a) of the NIRA as the bill made its journey through the Congress. It has been seen how the section was strengthened from the labor viewpoint by the acceptance by the House of the two amendments proposed before the House Committee on Ways and Means, and how this labor-strengthened measure was able to withstand the attacks made upon it by witnesses appearing before the Senate Committee on Finance, and on the floor of the Senate, in the debate on "existing satisfactory relationships".

With the passage of the Act on June 16, 1933, after the Congressional discussions of the preceding month, the meaning and significance of Section 7 (a) as it was finally enacted, was thought to be entirely clear. But the resistance of certain big industries, and the conflict of opinion between various parts of the NRA organization itself, resulted in a constant stream of elucidation and interpretation as to the meaning of the section.

Early Interpretations

It has been suggested in Chapter I that Section 7 (a) was intended as a channel for the attainment of all the labor objectives contained in the Act; but most specifically, for the first of these, namely: "To induce and maintain the united action of labor and management". In support of this view may be cited the first interpretative allusion to Section 7 (a), that contained in the statement made by President Roosevelt on the day the Act was passed, outlining the policies of the National Recovery Administration:

> "This law is also a challenge to labor. Workers, too, are here given a new charter of rights long sought and hitherto denied. But they know that the first move expected by the Nation is great cooperation of all employers, by one single mass action to improve the case of workers on a scale never attempted in any nation. Industries can do this only if they have the support of the whole public and especially of their own workers..... A Labor Advisory Board appointed by the Secretary of Labor will be responsible that every affected group, whether organized or unorganized, is fully and adequately represented in any advisory capacity, and any interested labor group will be entitled to be heard through representatives of its own choosing." (*)

(*) NRA Bulletin #1. "Statement by the President of the United States of America Outlining Policies of the National Recovery Administration," June 16, 1933, Government Printing Office, Washington, 1933, pp. 2-3. Underlining inserted by the writer. Cf General Johnson's radio broadcast of June 25, p. 5a below. Confirmation of this viewpoint is found in General Johnson's statement of July 7 as follows: "The policy of the National Recovery Administration

4 How the National Recovery Administration intended to interpret the "united action of labor and management" was suggested three days later, on June 19, when General Johnson, as Administrator, issued NRA Bulletin No. 2, the purpose of which was stated in the opening sentence as follows: "This bulletin is intended to inform all trade associations, industrial and labor groups how to proceed to secure the benefits of the National Industrial Recovery Act." Paragraphs (5) and (6) of this bulletin state the position taken by the Administration with regard to the labor provisions:

> "(5) The Act requires that certain provisions found in Subsection (a) of Section 7 shall be included in every code and therefore no application for the approval of any basic code will be received which omits or modifies these mandatory provisions, which are as follows: (Section 7 (a) then quoted).
>
> "(6) It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself. Neither is it the purpose of the Administration to compel the organization of either industry or labor. Basic Codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment, which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining." (*)

The above statements indicate what the Administrator felt was to be labor's share in NRA. First, it was clear that Section 7(a) itself was to go into all codes. Second, its provisions were not to be modified. Third, it is clearly stated that the initiative for the formulation of codes was to come from within industry itself. And fourth, it was implied that the drawing of the codes need not neceessarily be a joint process between industry and labor, to receive administrative approval.

In a press conference on the following day, June 20, General Johnson made it quite clear that not only was it not necessary for a

---

Footnote cont'd.

respecting the rights and obligations of both organized and unorganized labor is based on the declaration of policy in Section 1 of the Act itself, which clearly stated the objectives of this legislation, in part as follows: 'to induce and maintain united action of labor and management under adequate government sanction and supervision.' Manifestly the purpose of the Act is to create and preserve harmonious relationships and to prevent industrial strife and class conflicts."

(*) NRA Bulletin No.2, "basic Codes of Fair Competition," June 19,1933, Government Printing Office, Washington, 1933,--pp.2-3. Double underlining- General Johnson's; single underlining, inserted by the writer.

proposed code to be the product of joint bargaining between labor and industry, but it was in fact not expected that labor should come forward with its own proposals. (*)

The announcement of June 19, and the above comment at this press conference brought a strong protest from the Labor Advisory Board,

---

(*) NRA Rlease No. 5, June 21,1933. A complete set of NRA Releases is to be found in NRA Files, This interpretation, as well as General Johnson's conception of the somewhat passive relation of himself as Administrator to labor's objectives, are to be found in his answer to the following questions:

> Q. "Will there be any attempt to organize men in non-union plants?
> A. "Section 7 takes care of that, but also it must be put in the code. I have said this consistently and to every one concerned and the A.F. of L. agrees with me that this Administration is not to be used for unionizing any industry."
> Q. "How can you have a fair code in the coal industry without unions?
> A. "If the men organize, that is all right. My job is to sit here in an impartial way. I have no initiative in this thing. This law has given men the right to bargain collectively. There is no argument. I have a law to execute and I am going to execute it."
>
> -
>
> Q. "If in a certain industry where few men are employed, they organized to take advantage of this Act and presented a code, what would you do?"
> A. "The employees present nothing here. The codes are presented for the industry by the employers. If they do not come in they cannot get the benefits of the Code."

General Johnson's comment "the Administration was not to be used for organizing labor" should be compared with his statements in Bulletin No. 2, that it was not the purpose of the Administration "to compel the organization of either industry or labor."

which held its first meeting on June 22, 1933.(*)

At this same meeting, Secretary Perkins outlined what she considered to be the functions of the Board; to offer assistance to both the organized and unorganized, to encourage organization by sending its members out into the field. While, therefore, it was the Administrator's interpretation that it was not the purpose of the Administration "to compel the organization of either industry or labor," or "to be used for organizing labor", it was Secretary Perkins' interpretation that it was a purpose of the Administration to invite and encourage the organization of labor. When General Johnson joined the meeting, Secretary Perkins called to his attention the fact that companies were writing to the Department of Labor for copies of company union plans. When the question was raised as to the formation of new

---

(*) New York Times of June 23, 1934, reports as follows:

"Johnson's Hint of Hands Off on Collective Bargaining Draws a Protest.

"Johnson called to task by his own Labor Advisory Committee, headed by Secretary Perkins, for hands off attitude toward collective bargaining in negotiating fair competition codes.

"Labor's protest against recovery plans registered by the Administration's own Labor Advisory Committee, was directed primarily at the announced intention of General Johnson not to require collective bargaining in negotiating the fair competition codes. General Johnson said in one of his first pronouncements that basic codes might be approved even though they were not [illegible]e agreed upon with labor bargaining collectively. He said that the right of labor to treat as a group in these agreements with industry would be recognized but was emphatic in the statement that the Administration did not propose to unionize or otherwise organize labor for this purpose. General Johnson was called into the meeting of the Labor Advisory group today and was understood to have made some concessions regarding the encouragement of collective bargaining. The committee decided informally to constitute itself not only as an advisory group to General Johnson, but also as an agency to be ever on the alert to protect the interests of labor."

company unions, Johnson said that was "out". He stated that the Labor Advisory Board and the Industrial Advisory Board should get together on this issue. (*)

General Johnson's statements as to manner in which codes were to be developed were supplemented by a speech of Dudley Cates, Assistant Administrator, on June 22:

> "Mr. Cates at the outset clarified two misconceptions which many business men have carried to Washington with them when they have come to discuss codes for their industries. The government, he declared, has no intention of telling industry what it must do -- the initiative must proceed from within industry itself. Nor does the Administration contemplate price fixing as part of its functions." (**)

Apparently the protest of the Labor Advisory Board had its effect, because the next day, we find General Johnson using somewhat firmer language. Whereas at his press conference on June 20, he had said: "This law has given men the right to bargain collectively," on June 23, he stated that "Section 7 (a) makes mandatory the right of labor to bargain collectively." (***)

Over a nation-wide network, General Johnson broadcast on June 25, a talk on the NRA, in the course of which he had the following say on the subject of the relations of labor and management under the new Act:

> "In the first place there has recently been unfortunate and ill-formed conjecture that there is some mutual fear between labor and industry which has slowed up the preparation of industrial agreements for submission to the President. On the one hand it is said that labor has to rush to organize and submit collective demands before industry submits any agreement. On the other it is said industry should rush to form company unions. Both sayings are wrong and both are very harmful.
>
> "The law is clear, and it is the law that governs. Under Section 3 (a), it is trade or industrial associations or groups, and not combinations of trade with labor groups which have been asked to say in their first or basic agreements what the whole industry proposes to do about hours and wages. Before any such agreements can be approved, there will be a public hearing, and, at that hearing, labor will have a full and unrestricted right to present its case. Furthermore,

---

(*) Diary of Dr. Francis J. Haas, former member of Labor Advisory Board. Not publicly available.

(**) NRA Release No. 7, June 22, 1933.

(***) NRA Release No. 10, June 23, 1933.

> the law specifically requires that everyone of these agreements contain a covenant to recognize collective bargaining and not to require men to join a company union as a condition of employment. There is therefore nothing to be gained by haste for either side and certainly the rapid organization of a company union would gain nothing if the purpose is to require men to join it as a condition of employment, because that would be in violation of the law.
>
> "This law says that one of its objects is 'to induce and maintain united action of labor and management under adequate government sanction and supervision.' Agreeing on hours and conditions of labor under adequate government supervision should hold no fears for the fair minded industrialist. On the other hand, the Administration is required by the Act to obtain a fair deal for labor in any organized industry. It is not the function or the purpose of the Administration to organize either industry or labor." (*)

This interpretation of the relation of the roles of labor and industry appears again in a statement of General Johnson, made a week later:

> "I look to this new industrial self-government to be self-policing. We had a somewhat similar experience in exacting the draft law during the war. The basic thing here is that these industrialists agree among themselves as to the acceptance of a code. If there are violations there will be complaints. If, for example, it is complained that men have been fired because they joined a union, and that is brought to us, and upon investigation it is found to be true, the government could step in and withdraw the company from the benefits of the code. If complaints of coercion are brought against a union, then under Section 4 of the Recovery Act, we would have to investigate that." (**)

Here it is indicated that the government will intervene to punish patent violators of Section 7 (a), whether they be from the side of labor or of management. It was less clear, however, to what degree the Administrator was prepared to extend the support of the government to giving the type of positive content to Section 7 (a) that labor believed it definitely implied.

Donald Richberg's remarks in an early address that "we are not trying to unionize labor by federal command" (***) sounded a note of

---

(*) NRA Release No. 11, June 25, 1933. Compare last line with footnote, p. 52 .

(**) NRA Release No. 28, July 3, 1933.

(***) NRA Release No. 30, July 6, 1933.

warned which was elaborated more fully by General Johnson in a statement issued on July 7. In the phrasing, this statement also shows the attempt that was being made to appear not to side with either of the forces of labor or management. Referring to communications "purporting" to come from trade unions and industrial concerns sponsoring company unions that NRA benefits could be secured only through membership in their respective organizations, the statement says:

> "Both statements are incorrect and such erroneous statments of the Act and its Administration tend to foment misunderstanding and discord. . . . .it is not the duty of the Administration to act as an agent to unionize labor in any industry, and as has been repeatedly stated, it will not so act. It is the duty of the Administration to require the inclusion in codes of the mandatory conditions of Section 7 and to see these conditions are complied with, and it will perform that duty . . . . It is not the function or the purpose of the Administration to organize either industry or labor." (*)

It appears from this statement that the duty devolving upon the Administration was merely one of seeing to it that Section 7 (a) was included in drawing up the codes. Not only was the Administration not going to act as an agent for the organization of labor, but it was not going to tip the scale in the interest of collective bargaining as against individual bargaining:

> "Labor in any industry has the right to organize and bargain collectively; the law also recognizes the right of individual workers to bargain for their own conditions of employment." (**)

It will be seen from all the foregoing that the NRA Administrator believed that the position of NRA with respect to Section 7 (a) should be one that might be described as a policy of "impartial enforcement". He believed it was not the function of NRA to give any consideration to 7 (a) that would be partial to either labor or management. The NRA maintained that it was not within its purposes to organize either labor or management; that while it recognized the right to workers to bargain collectively, it would not deprive them of the right to bargain individually. While it was the Administration's function to see to it that the provisions of the Act were enforced, such enforcement should be entirely "impartial".

If it was believed in the first months of the NRA that,

> "it is the duty of the Administration to require the inclusion in codes of the mandatory conditions of Section 7, and to

---

(*) NRA Release No. 34, July 7, 1933.

(**) Ibid.

see these conditions are complied with, and it will perform that duty,"

it was soon to be learned that the performance of this duty was less simple than its enunciation.

In the first place, the NRA encountered considerable resistance in critical instances to its performance of the first part of its duty, the requirement of the "inclusion in codes of the mandatory conditions of Section 7", in the form set out in the statute. In several instances, important industries made attempts to place their own interpretations upon Section 7 (a). The outstanding examples of such efforts were the iron and steel, the bituminous coal, and the automobile industries. In the second place, the process of determining what the "mandatory conditions of Section 7" actually meant was a protracted one, accompanied by almost every conceivable form of delay and controversy. Third, the whole matter of assuring that "these conditions are complied with" was to prove a task of enormous complexity and difficulty.

Proposed Industry Interpretations of Section 7 (a)

The "Open Shop" Issue

One of the first attempts at interpretation of 7 (a) which developed into a controversy, was the effort made by the iron and steel industry so to construe 7 (a) as to guarantee the "open shop". The attitude of the industry on this question had been emphatically stated by Mr. Robert P. Lamont, during the hearings before the Senate Finance Committee. (*)

When this industry brought forth its proposed code, it contained the following provision under Article IV, which dealt with "Hours of Labor, Rates of Pay and Other Conditions of Employment":

"Section 2.- The plants of the industry are open to capable workmen without regard to their membership or non-union membership in any labor organization. The industry firmly believes that the unqualified maintenance of this principle is in the interests of its employees.

"For many years the members of the industry have been and are now prepared to deal directly with the employees of such members collectively on all matters relating to their employment. The principles of collective bargaining under which certain members of the industry have dealt with their employees are embodied in Employee Representation Plans which are now in force at plants of members of the industry generally. The

---

(*) See p. 57 above,; and Appendix II - where Mr. Lamont's testimony is reproduced.

fundamental principles of such plans are set forth in Schedule C, annexed hereto. It is the belief of the industry that the method of collective bargaining set forth in such plans provides for a day-to-day adjustment of all matters relating to the employment of employees in the industry and at the same time issues to such employees a knowledge and an understanding of the conditions of the business of their employers which otherwise they would be unable to obtain; that such principles should be maintained; and that the rights of the employees and members of the industry to bargain collectively through representatives elected or appointed and acting in accordance with such plans without interference, restraint or coercion of any sort, should be preserved and protected."(*)

Schedule C, entitled "Fundamental Principles of Employee Representation Plans", are referred to in this proposed Article IV, Section 2, provided for the election of representatives by secret ballot, the election to be held on the employers premises, the representatives to be chosen from among the employees. Such representatives were to discuss with the managements' representatives at regular intervals matters of mutual interest; if there was a disagreement on a question of "hours of labor, rates of pay, and other conditions of employment", the matter was to go to the head of the concern for final decision.(**)

Organized labor strenuously protested against the inclusion in the code of Article IV, Section 2, Schedule C. Such inclusion, in its view, would mean the fixation in the industry of the "open shop" and the "company union". Its leaders prepared to fight for its rejection, and with William Green acting as labor adviser on the code, presented a brief, outlining the basis of its opposition.

The brief (***) argued that the proposed changes should be stricken from the code for two reasons: First, because they would be a violation of the Act; second, they were economically unwise. The first set of reasons was held to be sufficient grounds for their elimination.

It was argued that Article IV, Section 2, and the accompanying Schedule C --- by requiring employees to select their representatives from a group designated by the employer; to conduct their elections in a place designated by the employer --his premises; and by making appeal possible only to the employer, who has final decision, rather than to an impartial agency -- was in conflict with

---

(*) NRA Release No. 51 b, July 15, 1933.

(**) Schedule C is given in Appendix IV.

(***) The text of the brief appears in the American Federationist, September, 1933, pp. 914 -923.

the whole tenor and spirit of the Act. These provisions were alleged to constitute a violation of Section 7 (a) by depriving the workers in the steel industry of the choice of their representatives, free from "interference, coercion or restraint". The brief cited in support of its position, the results of its canvass of the opinions of some twenty academic experts in the field of industrial relations.

On July 29, just two days prior to the beginning of the hearings on the Code, in the course of an interview, General Johnson made the following equivocal statement:

> "As I understand it, an open shop is a place where any man who is competent and whose services are desired will be employed regardless of whether or not he belongs to a union. That is what the law says. The statute cannot be qualified. . . . the law clearly states that there shall not be any requirement as to whether or not a man belongs to a union. Is anything clearer than that needed?
>
> "I want to say again, it does not make any difference what anybody puts into a code; they cannot change the statute by putting something into it. If there is a conflict between the code and the statute the code will be received with those words, but it will be considered as though they were not in it." (*)

General Johnson here seems to suggest that modifications in the language or meaning of Section 7 (a), such as were attempted in the proposed code, will not be accepted by the Administration; but at the same time appears to find the position taken by the industry not in conflict with the meaning of Section 7 (a).

In this complicated situation -- marked by sharp disagreements and great tensions -- the hearings and negotiations dragged on for several weeks and on several crucial occasions came perilously near complete break-down. Finally, the industry agreed to drop the particular sections that had been objected to --- Article IV, Section 2 and Schedule C --- and when the code was finally approved on August 19, Section 7 (a) appeared intact with no modifications of any kind.

The "Merit Clause Controversy"

A second attempt was made to modify Section 7 (a), in the proposed code submitted by the automobile industry. The industry proposed the following addition to Section 7 (a):

> "In accordance with the foregoing provisions, the employers in the automobile industry propose to continue the open shop policy heretofore followed and under which unusually satisfactory and harmonious relations with employees have been maintained. The selection, retention and advancement of employees will be on the basis of individual merit, without regard to their affiliation or

(*) NRA Release No. 136, July 29, 1933

non-affiliation with any labor or other organization." (*) It will be observed how the approach of the automobile industry toward the modification of Section 7 (a) differed from that of the iron and steel industry. The latter endeavoured to find the justification for its desire to have the open shop in the language of the Act, itself. The automobile industry on the other hand merely indicated that they were proposing to carry on their customary policy of the open shop.

This proposed addition was interpreted by organized labor as being a challenge to its interpretation of Section 7 (a) which had prevailed in the outcome of the earlier controversy over the iron and steel code. Again, there was a vigorous protest by labor leaders - - - and demands made upon NRA to have this addition removed. Under pressure during the negotiations the language of this provision was several times modified and revised to read as follows:

> "(Citation of Section 7 (a)). Under the foregoing provisions, employers may continue the open shop policy under which the selection, retention, and advancement of employees will be on the basis of individual merit without regard to their affiliation or non-affiliation with any labor or other organization." (**)

This revised version was still objected to by labor which brought further pressure to bear on NRA to have this passage removed. This time labor's protest was only partially successful. At the public hearings on August 18, 1933, the NRA took the position that no references to the controversial issue of the open shop were to be incorporated in codes. (***) While not entirely excised, the clause appeared in the code as finally approved as an addition to Section 7 (a) in the following substantially emasculated form:

"Without in any way attempting to qualify or modify by interpretation the foregoing requirements of the N.I.R.A., employers in the industry may exercise their right to select, retain, or advance employees on the basis of individual merit, without regard to their membership or non-membership in any organization" (****)

(*) Article VI 6, Proposed Code of Fair Competition for Automobile Industry, submitted by the National Automobile Chamber of Commerce, Inc. New York City, July 28, 1933.

(**) "Code of Fair Competition for Automobile Manufacturing Industry, containing suggested revisions which the Code Committee of the N.A.C. of C. intends to recommend to the Chamber for approval." 2nd revision, NRA Files.

(***) National Industrial Recovery Administration, Hearings on Codes of Fair Practice and Competition, Automobile Hearings, August 18, 1933, p.93.

(****) NRA Codes of Fair Competition, Volume I, p. 286, Code No. 17

Even in this attenuated form the clause was still objected to by organized labor, who cited in justification of its apprehension, the demands that were registered immediately by other industries to have the merit clause incorporated in their codes. (*) Labor protest was vigorously expressed through the Labor Advisory Board which pointed out that it had only approved of its inclusion upon the condition that it was in no way to qualify Section 7 (a), nor constitute a precedent for its inclusion in other codes. (**) Simultaneously with the approval of the code by the President, the Board announced it would oppose any future modification of Section 7 (a). (***) A few days later the board issued a formal statement indicating that the basis of its opposition to the clause lay in its belief that the terms "efficiency" and "merit" had frequently been misused, to serve

> "as a screen behind which employers opposed to any organization by their employees have intimidated and eliminated wage earners favoring organization. The term as applied has left the sole determination of what constitutes efficiency or merit to the employer without adequate appeal by the workmen who have been discriminated against." (****)

The bitter controversy that had been provoked by this clause led General Johnson, himself, to the conclusion that it should be prohibited from any future code, although it would have to stay in the Automobile Code, due to a personal promise, made in "an unguarded moment." (*****)

"Collective Bargaining" in Coal

The third significant attempt at modification of Section 7 (a) was made in the bituminous coal industry. Here the situation was peculiarly complicated by the fact that one part of the industry, the central competitive field, had long dealt with the union, while the other sections-- the Appalachian, Southern and Western Pennsylvania regions-- had always opposed the union. The role played by each group in the negotiations

---

(*) Such requests were received from some thirty codes before the end of August, 1933. NRA Release No. 585, August 31, 1933.
(**) N. Y. Times, August 27, 1933.
(***) N. Y. Times, August 29, 1933.
(****) NRA Release No. 585, August 31, 1933, Appendix V.
(*****) N.Y. Times, September 7, 1933. General Johnson in the "Blue Eagle" says, (p. 238):

"The final submission of the Automobile Code was made to me in Detroit. In that case I made such a slip as I suppose might be expected of anybody in such stress. The code contained the famous merit clause. To my mind it doesn't mean anything. Nobody can agree to modify or amend a law or a statute. But the President was determined against even the appearance of doing so. I read this one hastily and said I would approve it. The code was submitted on that condition. Later I saw that it was inconsistent with this phase of the President's policy, but I could not throw it out and keep my word. It is in there still. It has never raised a question of dispute, and it never will, because it is meaningless. But if I had it to do over again, it would not be there."

that dragged on from two months until the code was finally approved on September 18, were thus very difficult. The first group was entirely willing to deal with the union, the United Mine Workers, and thus introduced no obstacle in the form of proposed modifications of Section 7 (a). On the other hand a number of such modifications were attempted by the second group. The following is the proposed additions of three of the largest associations of operators:

> "The foregoing requirements shall apply to each employer in his relation to his own employees, but no employer shall be required to deal jointly with other employers, or with representatives of any employees other than his own and any collective bargaining shall be on behalf of only those employees participating therein, the employer being equally free to deal separately with any other of his employees not so participating.
>
> "It is a condition of this code that no person shall be required to join any labor organization to retain or secure employment or to receive the benefits of this code and the right of every individual to refuse to join a labor organization and his right to bargain either individually or collectively with his fellow employees, free from interference, coercion or restraint of any labor organization are hereby expressly recognized." (*)

Again, organized labor, through the powerful voice of the United Mine Workers, expressed its opposition to the inclusion of these provisions. This protest was successful in having the provisions withdrawn and replaced by an "individual merit" clause; any further concessions were indicated by the Appalachian operators, as being impossible.

Thus the lines of opposition were sharply drawn with both sides refusing to budge. The tension was further increased by applicable principles of law, and giving expression to interpretative constructions of Section 7 (a). (**) Gradually, and especially with the establishment of the system of regional boards for the settlement of disputes locally, the practice grew up for the Board regularly to make such Section 7(a) interpretations. This practice received official

---

(*) Mimeograph copies of proposed codes of Southern Coal Control Association, the Smokeless and Appalachian Coal Association, the Western Kentucky Association, NRA Files.

(**) The first occasion of the sort was in the case of the Berkley Woolen Mills, in which the Board ruled that Section 7(a) required an employer to deal with the representative selected by his employees, regardless of whether these representatives were fellow employees or not. I-N.L.B. 56. Decisions of the National Labor Board and the National Labor Relations Board will be cited in these pages as N.L.B., N.L.R.B., respectively. Numerals preceding and following such symbolic notations will indicate volume and page, respectively, in conventional fashion.

approval, in the Executive Order of December 16, (*) 1933 which ratified the prior acts of the Board. In all, during the eleven months of its existence, the Labor Board handed down 146 decisions.

When the National Labor Relations Board was created to replace the National Labor Board, the first decision it had to make was whether it would act in a mediatory or judicial capacity. In the words of its first chairman, Mr. Lloyd K. Garrison:

> "As we reviewed this history (National Labor Board) in the early weeks of July, 1934, and worked over the docket of nearly a hundred unfinished cases inherited from the Wagner Board, with new ones coming in daily, it became quite clear that we could not act as both mediator and judge. There was not time; and a mediator who suggests compromises, cannot also be a judge who applies principles. We must be one or the other. If we were to be mediators only, most of the cases before us would remain undisposed of, for they could not be settled by agreement. We were unwilling to pass these cases by, because Section 7(a) was the law and we had been set up to bring about compliance with it. Therefore we determined to sit as judges and not engage in mediation.

the rapid spread of organization among the Appalachian miners, a growing unrest and the outbreak of a strike in the Pennsylvania coal fields. For a while it seemed that the only result of the negotiations would be a widespread coal strike, but this threatened outcome was averted and a compromise arrived at. A code was agreed upon and submitted to the President.

Article V (a) of this code contained the provisions of Section 7 (a). Article V (b) read as follows:

> "In the submission or acceptance of this code the interpretation is adopted of the requirements transcribed in the foregoing paragraph (a) from Section 7 (a) of the National Industrial Recovery Act, which was jointly announced by theAdministrator and General Counsel of the National Industrial Recovery Administration, on August 24, 1933, a copy of which is attached to this code as Schedule B." (**)

The joint Johnson-Richberg interpretation referred to, and which was attached to the proposed code as Schedule B, was practically identical with General Johnson's radio broadcast of August 23. It was objected to by organized labor in the persons of William Green and John L. Lewis. The following statement by the President, on September 18, 1933, appeared in his Executive Order approving the code:

> "Because it is evident that attempts by those submitting codes to interpret Section 7 (a) of the National Industrial Recovery Act have led to confusion and misunderstanding, such interpretations should not be incorporated in codes of fair competition. Therefore paragraph (b) of Article V must be eliminated without by this exclusion indicating disapproval in any way of the joint statement of the Administrator and General Counsel of the National Recovery Administration which has been attached to the code as Schedule B and was incorporated by ref-

(*) For this joint interpretation, see p.62 below.

erence in said paragraph (b) of Article V." (*)

The Meaning of Section 7 (a)

The issues of the open shop, the "individual merit" clause, and collective bargaining raised in the course of the controversies recounted above, placed a new responsibility on the NRA and its then principal officials, General Johnson and Mr. Richberg. This was to define for the country at large just what the provisions of Section 7 (a) implied. Somewhat later, with the creation of the National Labor Board, this became the chief preoccupation of that board and its successor, the first National Labor Relations Board. But before the National Labor Board began to function in such a capacity, the NRA had to assume the responsibility of making the official interpretations of Section 7 (a). (**)

General Johnson attempted to make some of these interpretations in a radio broadcast on August 24, in which he went into these matters in some detail: (***)

"One cause of dispute is a certain obscurity about one section of this Act. It is necessary to state the official interpretation and I take this occasion to do so. It is as follows:

"The plain meaning of Section 7 (a) cannot be changed by any interpretation by anyone. It is the function of the Administrator and the courts, to apply and to interpret the law in its administration; and no one else can assume this function and no official interpretation can be circumscribed, affected or foreclosed by anyone writing his own interpretation into any code or agreement. Such an interpretation has no place there and cannot be permitted."

Having indicated that the function of interpretation belonged only to the courts and to himself as Administrator, General Johnson once more stated his rejection of the claims of both labor and industry, to favored forms of organization:

"The words 'open shop' and 'closed shop' are not used in the law, and cannot be written into the law."

Reiterating the language of the Act, he attempted to give definite content to the collective bargaining clause:

"The law requires in codes and agreements that 'employees shall have the right to organize and bargain collectively through representatives of their own choosing.'

(*) NRA Codes of Fair Competition, Volume I, p. 534. Approved Code No. 84.

(**) In fact the relation between NRA and the National Labor Board was never clearly defined in this matter of responsibility and authority for making such interpretations. The result was a continuously recurrent conflict between these two agencies. See Chapter V.

(***) NRA Release No. 467, August 24, 1933. NRA Files

"This can mean only one thing, which is that employees can choose anyone they desire to represent them, or they can choose to represent themselves. Employers likewise can make collective bargains with organized employees, or individual agreements with those who choose to act individually; provided, of course, that no such collective or individual agreement is in violation of any State or Federal law. But neither employers nor employees are required, by law, to agree to any particular contract, whether proposed as an individual or collective agreement."

A clear definition of what constitutes the "interference, restraint or coercion" prohibited by clause (2) is found in Texas and New Orleans Railroad case.

"The law provides that employees shall be free from the interference, restraint or coercion of employers in the exercise of their rights established by the law. The conduct of employers which is here prohibited has been defined by the Supreme Court in the case entitled - T. & N.O.R.R. v. Brotherhood of Railway Clerks, 281 U. S. 548. The rulings of the Supreme Court lay down the law which governs the NRA."

It is the enforced membership in company unions, not the union itself, that is prohibited:

"Under Section 7(a), employers are forbidden to require 'as a condition of employment' that an employee shall either 'join a company union', or 'refrain from joining, organizing or assisting a labor organization of his own choosing'. The law does not prohibit the existence of a local labor organization, which may be called a company union and is composed only of the employees of one company. But it does prohibit an employer from requiring, as a condition of employment, that any employee join a company union and it prohibits the maintenance of a company union, or any other labor organization, by the interference, restraint or coercion of an employer."

The NRA is prepared to conduct secret elections if a dispute arises:

"If there is any dispute in a particular case over who are the representatives of the employees of their own choosing, the NRA will offer its services to conduct an impartial investigation, and, if necessary, a secret ballot to settle the question,"

but will not decide as to the desirability or validity of a specific contract:

"The NRA will not undertake in any instances to decide that a particular contract should be made, or should not be made between lawful representatives of employees and employers; or to decide that a contract which has been lawfully made should not be enforced."

A significant indication of General Johnson's belief as to what constituted proper NRA policy as regards Section 7 (a) is contained in his statement on the occasion of the resignation of Mr. Dudley Cates as

Assistant Administrator of NRA. Mr. Cates found himself opposed to the existing labor policy of the NRA, believing it should encourage the replacement of craft unions by industrial unions, which should be responsible to government.(*) General Johnson in his statement said:

> "Mr. Cates' statement discloses a theme which many of here entertain: that, with an industry organized vertically, the logical labor organization is vertical also with overhead control in labor as responsible to government as it is in industry and that craft organizations is obsolete. The difficulty in passing from theory to practice is that the law says of labor organizations that they shall be of the 'workers 'own choosing'. I early determined that it was the function of the NRA as prescribed by the statute to maintain an attitude of perfect neutrality, to lend itself to no one theory but to execute the law. Mr. Cates quite recently wrote me that he thought existing trade unionism obsolete, and that he had set himself to stop it at 'every turn'. Obviously, that attitude is in violation of the law which we were both sworn to enforce."(**)

This statement of General Johnson had already been seized upon as an excellent description of his interpretation of correct NRA policy with regard to Section 7(a) --- "to maintain an attitude of perfect neutrality". This statement also reflects one of his earliest declarations --- "I have a law to execute and I am going to execute it". But his further reference, that NRA would "lend itself to no one theory" suggests his growing recognition that "executing the law" was not a simple, clear-cut task, but one involving a conflict of numerous "rights" interests and pressures.

(*) New York Times, August 31, 1933.

(**) NRA Release No. 602, September 1, 1933. The above quotation can be found in Lorwin and Wubnig, Labor Relations Boards, Brookings Institution, 1936, p. 76. Underlining inserted by the writer.

CHAPTER V

THE IMPLEMENTATION OF SECTION 7 (A)

THE LABOR BOARDS

It has been observed that Section 7 (a) was inserted in the NIRA as a means of realizing the purpose "to induce and maintain united action of labor and management under adequate governmental sanctions and supervision."(*)

In spite of the end desired, the traditions of conflict between labor and management that have existed in America, and the further fact that the inclusion of Section 7 (a) in codes was made mandatory, no provision was made in the Act itself, for the setting up of machinery to deal with the conflicts that inevitably were bound to arise.

The wave of strikes that swept the country in July 1933, during the promotion of the PRA made the creation of some such machinery an immediate necessity. The National Labor Board, established on August 5, was the first of a congeries of boards that were set up during the years 1933-35, to settle the disputes arising between labor and management under the operation of the NRA. The boards differed as to their purposes and authority. Some were established to settle "Labor complaints," others to settle labor "disputes," some in fact did both.(**) Some were set up under the NRA; others were independent of it; the status of the National Labor Board was never entirely clear, until the Board was abolished, Our concern here is only with the handling of "labor disputes." For purposes of classification, we may consider these boards as falling into the three general categories of "general boards," "special boards," and "code boards."(***)

By "general" boards are meant those whose activities covered the labor scene in general, and which laid down principles whose application was equally wide. This group would include the National Labor Board and its successor the National Labor Relations Board.(****) By "special" boards are meant those boards set up for special industries

---

(*) NIRA Title I, Section 1, Declaration of Policy.

(**) The distinction made by NRA between labor complaints and labor disputes is as follows: "The term 'labor complaints' --- refers to a complaint alleging a violation of the labor provision of a code; the term 'labor dispute' --- refers to a situation where a strike or lockout exists or is threatened --- or to a complaint which because it primarily involves Section 7 (a) of NIRA, may lead to a labor dispute." NRA Bulletin No. 7. "Manual for the Adjustment of Complaints," Government Printing Office, Washington 1934, p. 5.

(***) This classification is one based on scope of activities rather than on the criteria of authority or purpose suggested. The code boards were essentially "special boards" set up under codes.

(****) The present National Labor Relations Board, successor to the identically named board mentioned in the text, although legally an independent creation, is in the tradition of these "general" boards.

but independently of NRA jurisdiction such as the Petroleum Labor Policy Board, the Longshoremen's Board, the National Steel Labor Relations Board and the Textile Labor Relations Board.(*)

The "code" boards, also attached to specific codified industries, were established within the codes and under NRA's jurisdiction. Some seventy codes provided for the establishment of labor complaints committees, and/or industrial relations boards, (the former the machinery for handling "complaints," the latter, for "disputes"); about twenty-five were functioning at the expiration of NRA. The better known of the industrial relations Boards, were the original Cotton Textile National Industrial Relations Board, the Bituminous Coal Boards, (National and Divisional) the Automobile Labor Board, Construction Board, and the Newspaper Industrial Board, etc.(**)

The various groups of boards for the settlement of Section 7 (a) disputes described above have been referred to as the "labor boards system".(***) If it be considered, however, that a system is defined as the "orderly combination or arrangement, as of parts or elements, into a whole," it must be recognized that the various boards constituted a very bad "system," or more precisely, no "system" at all. The situation was one of confusion and of overlapping authorities, functions and purposes. The inter-relationship of these boards cannot be understood if they are considered as the product of a logical plan. Rather they must be viewed historically as agencies created in haste, to meet the exigencies of a rapidly shifting set of power relationships.

The National Labor Board

The National Labor Board was established by the President on August 5, 1933 upon joint recommendation of the Industrial and Labor

---

(*) The Petroleum Labor Policy Board was in a special category. It was attached to the Petroleum Code, but the latter, though negotiated under NRA was, immediately upon approval, assigned for administration to the Secretary of the Interior. The Labor Policy Board was thus independent of the NRA and under the jurisdiction of the Petroleum Administration. The other boards mentioned here were established under authority of Public Resolution No. 44, June 19, 1934 along with the N.L.R.B.

(**) A word should be said about the Labor Advisory Board, which has frequently been incorrectly thought of as a part of the galaxy of boards described above. The Labor Advisory Board had no direct relation to the settlement of labor disputes. It was one of the three advisory boards, the other two being the Industrial Advisory Board, and the Consumers' Advisory Board. The function of these boards was to represent the interests of labor, industry and consumers, respectively, before the Administration.

(***) Lyon, Leverett et al. The National Recovery Administration Section by L. Lorwin, p.466, and Lorwin and Wubnig, Labor Relations Boards, Part III.

Advisory Boards. (*) The President followed the Boards' recommendation both as to personnel and powers. (**)

The definition of the Boards' powers, as contained in the statement of the advisory boards, and as approved by the President, reads as follows:

> "This Board will consider, adjust and settle differences and controversies that may arise through differing interpretations of the President's Reemployment Agreement and will act with all possible dispatch in making known their findings. In return, employers and employees are asked to take no disturbing action pending hearings and final decisions. This Board will promptly proceed to establish such central and local organizations as it may require to settle on the ground such differences as arise in various parts of the country." (***)

(*) General Johnson in his "Blue Eagle from Egg to Earth", p. 209 says: "At my suggestion, some months later the National Labor Board was created and also at my suggestion, Senator Wagner was appointed its chief. It was set up independently and not in connection with the Department of Labor." The General does not mention that the board's relation to NRA was not as clearly defined as its relation to the Department of Labor, a fact which caused much difficulty during the life of the board. To whom and when the General made his suggestions he does not say. The record shows that the creation of such a board along with suggested personnel, was recommended in a joint statement of the Industrial and Labor Advisory Boards to the President on August 3. (Minutes Industrial Advisory Board, NRA, August 3,1933). See Appendix VI-A. This statement was drawn up as a result of a joint meeting of the two boards to discuss what should be done about the growing industrial strife. Father Haas of the Labor Advisory Board seems to have been the first to recognize the probable necessity for some such bi-partisan board, the creation of which he proposed at a meeting of the Labor Advisory Board on July 9.

(**) The original personnel of the Board, numbering seven, was as follows: For industry: Walter C. Teagle (Chairman of the Industrial Advisory Board), Louis Kirstein, Gerard Swope, for labor: Dr. Leo Wolman (Chairman of the Labor Advisory Board), William Green, John L. Lewis; as impartial chairman, Senator Robert F. Wagner. The board was reorganized in February 1934 and its number increased to thirteen, as follows: Senator Wagner, Chairman, Clay Williams and L. C. Marshall, Vice-Chairman; Henry S. Dennison, Ernest Draper, Pierre S. du Pont, Louis E. Kirstein, Walter C. Teagle, for industry; George L. Berry, William Green, Dr. Francis Haas, John L. Lewis, Dr. Leo Wolman, for labor.

(***) National Labor Board, Decisions, Part I, also Appendix VI-A

This vague and rather uncertain grant of power was a serious source of difficulty and confusion. The Board was never quite sure of its own authority nor its relation to the boards subsequently created under NRA. The pressure of events caused the Board to assume powers and duties that had not been expressly granted to it. For example, it dealt with "differences and controversies" emanating from NRA codes as well as from PRA agreements; (*) although authorized to "consider, adjust and settle" differences, it undertook the task of adjudication, as well as that of mediation and conciliation. The uncertain definition of the Board's functions caused its authority to be challenged by employers, and its jurisdiction to be questioned by agencies more definitely under NRA control. Threatened with a loss of prestige and influence from such sources, the board had to be strengthened three times in its less than one year of life.

The board's powers were re-defined by three executive orders (**) That of December 16, 1933 approved the past actions of the Board, and specifically gave it jurisdiction over industrial disputes whether arising under PRA or under NRA. The order of February 1, 1934, expressly empowered the Board: to conduct elections of employee representatives for collective bargaining; to follow majority rule in these elections; and to refer resisting employers to NRA Administrator for "appropriate action". This last provision was modified by the executive order of February 23, 1934, so that offenders were to be referred, not to the Administrator, but to the Compliance Division of the NRA and/or the Attorney General; and, with an eye to strengthening the Board's position vis-a-vis the NRA, the Compliance Division was instructed not to review the findings of the Board.

The National Labor Board started its career auspiciously by its successful mediation of the widespread strike in the Berks County, Pennsylvania hosiery mills. This settlement, (***) on August 11, 1933 by an agreement later known as the "Reading Formula" contained four points which became standard N.L.B. policy: (1) the particular strike was to be immediately called off; (2) striking employees were to be reinstated without prejudice; (3) an election was to be held to designate employee representatives for collective bargaining purposes, these representatives to be authorized to negotiate collective agreements with the employers; and (4) workers and employers agreed to submit differences arising under the agreement to the National Labor Board.

(*) Note, however, that section (14) of PRA provided for conformity with Section 7 (a) of NIRA.

(**) No. 6511, December 16, 1933; No. 6580, February 1, 1934; No. 6612, February 23, 1934. For text of these orders see Appendix VI-A

(***) NRA Release No. 285, August 11, 1933. See Appendix VII

In the next few months by the use of this formula the National Labor Board was successful in settling many disputes originating in a wide range of industries and involving hundreds of thousands of workers. This success carried through the difficult month of October, 1933 -- a month of much industrial strife -- into November, when difficulties began to arise, culminating in a crisis in December with the challenge to the Board's authority presented by the Budd and Weirton cases. (*) The President endeavored to meet this situation with his order of December 16, 1933, strengthening the board's powers. With the continued "defiance" of the companies involved in the Weirton and Budd cases, and increasing employer resistance during December and January, the board was on the verge of complete breakdown. This led to showing by the Presidential orders of February 1 and February 23, 1934, respectively. These two orders ---- the first giving the Board specific authority to conduct elections, and by majority rule, and the second, confirming the Board's independence by denying the NRA Compliance Division the right to review the board's decisions --- gave new life to the waning powers of the Board.

One result of the issuance of these orders, however, was to produce a sharp conflict between N.L.B. and NRA, in their respective interpretations of the most question of elections. The announcement of the February 1, 1934 order was supplemented by what was subsequently alleged to be the "unauthorized comments of a subordinate official", the effect of which was to suggest that the Government had taken a position of opposition to company unions. (**)

(*) Employees of Weirton Steel Company, charged that the company was "coercing" them into voting for a company union at elections. Under pressure, the company stated that its interpretation of its strike settlement, was that the election of representatives was intended for an employee representation plan only. The Budd Mfg. Company had refused to comply with a decision of the Philadelphia Regional Board, calling for settlement of strike, on condition that all workers be re-employed and an election be held under the National Labor Board and the National Labor Relations Board. Some twenty regional boards were established. Lists of these are to be found in the volumes of the published decisions of the Board.

(**) These comments, contained in NRA Release No. 3078, February 1, 1934, read as follows: "The President's order is a direct result of the growing tendency on the part of industrial managements to build up 'company unions' in their plants. The unions are operated by employees' representatives chosen by the employer rather than by the employees themselves. Frequent charges that such company unions are not representative of the workers, but are dominated by the management, have been made. Typical among such cases are those of the Weirton Steel Company and the Budd Company of Philadelphia."

These comments evoked a storm of protest from industrialist organizations, which led to a joint statement on February 3, 1934 by General Johnson and Mr. Richberg, intended to clarify the meaning of the President's order.(*)

In their statement, the executive order of February was interpreted as providing merely "a method" for the selection of representatives by majority vote, but not "restricting or qualifying the right of minority groups or of individual employees to deal with their employer separately"; the statement also recalled that "Section 7 (a) permits minority as well as majority groups to organize, select representatives, and bargain collectively."

The effect of this interpretation was to legitimatize a multiple system of representation by recognizing majority, minority, and individual representation and bargaining. This policy, which has been well called one of "pluralism", (**) would permit the parallel existence of several collective agreements, the actual terms of which might conceivably vary greatly. This Johnson-Richberg interpretation thus ran directly counter to the policy that previously had been developed by the N.L.B., namely the majority rule for the election of representatives, who would speak for all of the employees in the unit covered by the election. The N.L.B. took an early opportunity, in the Denver-Tramway Corporation decision (***) dated March 1, to come out openly for the majority rule, thus standing squarely opposed to the Johnson-Richberg position.

The National Labor Board was greatly encouraged by the support given it in the afore mentioned two February orders. An internal reorganization took place, and the decision was made to push vigorously the fight on the Weirton case. Simultaneously Senator Wagner introduced his Labor Disputes bill (****) the purpose of which was to put the Board on a permanent statutory basis. The Board's "comeback" was evidenced, by a series of important decisions following upon the Denver Tramway case. (*****) But the Board's mounting prestige was struck

---

(*) NRA Release No. 3125, February 4, 1934. See Appendix VIII

(**) Lorwin and Wubnig, op cit. p. 269.

(***) 1 N.L.B. 64

(****) 73rd Congress, 2nd Session, S. 2926, March 1, 1934.

(*****) Hall Baking Company, March 8, 1934, 1 N.L.B. 83 affirmed the right of a union to be recognized as a party to collective agreements. Houde Engineering Company, March 8, 1934, 1 N.L.B. 87 held an employer is obligated to deal with union official even if he withholds identity of people he represents. Republic Steel Corporation, March 16, 1934, 1 N.L.B. 88 denies that a company union established prior to enactment of Section 7 (a) can impair rights created by Section 7 (a).

a fatal blow by its failure to make an adjustment of the automobile controversy, which was finally settled on March 25, 1934 by the intervention of General Johnson and President Roosevelt. The settlement failing to provide for elections, ignoring the majority rule, granting minority representation and establishing the Automobile Labor Board, was squarely in conflict with the policy developed by the N.L.B. and seemed to put the NRA Johnson-Richberg interpretation in the "saddle."

The succeeding months witnessed a steady evaporation of the authority and prestige of the Board. During this period there occurred the strikes of the Toledo auto workers, the Minneapolis truck drivers, the San Francisco longshoremen and the threatened general steel strike. While the N.L.B. participated in the settlement of these strikes, its role was a minor one. On June 19, 1934 Joint Resolution No. 44 was passed as an emergency measure and a substitute for the Wagner Labor Disputes Act; this resolution (*) empowering the President to create boards to investigate labor disputes and conduct elections, foreshadowed the end of the National Labor Board. Officially it expired on June 29, 1934, with the creation by the President of the National Labor Relations Board as its successor. (**)

. The National Labor Relations Board

The National Labor Relations Board (***) followed pretty much the lines of interpretation laid down by its predecessor, (****) although it carried further the interpretation of Section 7(a). The life of the N.L.R.B. was a much less difficult one than that of the N.L.B., for a variety of reasons, the most significant being the more explicit definition of its powers and jurisdiction, the substitution of a board of three impartial experts for a bi-partisan board, the elimination of jurisdictional dispute with NRA, and the handling of the problem of certain "difficult" industrial fields by special boards set up under the same resolution.

The Special Boards

This leads to a brief consideration of these "special" boards, all of which except one were created under authority of Public Resolution No. 44. The one exception is the Petroleum Labor Policy Board, which enjoys a peculiar status of its own, being independent both of

---

(*) The text of this resolution is reproduced in Appendix VI-B

(**) Executive Order No. 6763, June 29, 1934.

(***) Reference here is to the first board having this name, not to the board identically named set up under the National Labor Relations Act of 1935 (Public No. 198, 74th Congress, approved July 5, 1935).

(****) See statement by Chairman Lloyd Garrison, quoted on p. 79 below.

The NRA and the N.L.R.B. (*) Established directly under the Petroleum Administration, and backed by the authority of the Administration, the board probably has had freer scope for its activities than any of its fellow boards.

As to the other special boards: The National Longshoremen's Labor Board (**) was established for one specific purpose, namely, the settlement of the Pacific Coast longshoremen's strike.

The National Steel Labor Relations Board (***) spent it first six months in endeavoring, unsuccessfully, to bring about agreements between the employers who defended the existing status of employee representation plans and the trade unions, which insisted upon elections. These efforts proving unsuccessful, the board turned to the hearing and disposition of Section 7 (a) cases in the industry.

The Textile Labor Relations Board was created (****) by the President pursuant to the Winant Report (*****) terminating the textile strike of September, 1934; its attention seems to have been largely directed toward settling the issues of discrimination which arose as a result of that strike.

The Code Boards

There remains for consideration, the third group of labor boards, the NRA "code" boards. Like the N.L.B. these can be best understood when viewed historically, as the products of a process of accretion, rather than as a planned system. The story of the N.L.B. is the story of the fluctuations of its powers with respect to the social-economic factors, with which it had to deal. One of these factors was the NRA itself; and the story of the "code" boards is an account of the struggle for supremacy that took place between these two agencies.

The somewhat vague grant of powers that was given to the N.L.B. upon its creation caused uncertainty not only as to the scope of its authority, but also as to its relation to various NRA agencies, such as the compliance boards and the industrial relations boards.

The first of these industrial relations boards was established on August 9, 1933 under the first code approved by the NRA, that for Cotton Textiles; it was created primarily to handle the "stretchout"

(*) As provided for under the Act of creation of the N.L.R.B., the other joint resolution boards are under its final jurisdiction.

(**) Established June 26, 1934 by Executive Order No. 6748

(***) Established June 28, 1934 by Executive Order No. 6751.

(****) September 26, 1934, by Executive Order No. 6858.

(*****) Text of the report appears in the New York Times, September 28, 1934.

Problem in that industry. The board soon found itself handling all forms of disputes arising within the industry. A month later, a group of six industrial relations boards (called Coal Labor Boards) was established under the bituminous coal code. Certain elements within NRA urged the expansion of such industrial relations boards, but nothing much was done along these lines on account of the general state of uncertainty as to the demarcation of jurisdiction between the NRA and the N.L.B. An initial definition of these jurisdictions is contained in the President's order of December 16, 1933, (*) giving more detailed specification of the powers of the N.L.B. By granting the N.L.B., discretionary power for the consideration of disputes that might be handled through other channels, it placed final jurisdiction outside of, rather than within, the NRA.

The adoption of this policy resulted in the suspension of any active program of establishing additional industrial relations boards under the codes. Nevertheless, the NRA continued to study the whole question and formulated a tentative policy that was announced on January 22, 1934. (**) This policy rested upon the distinction between "labor complaints" and "labor disputes", already referred to. The procedures outlined provided for two channels for the handling of complaints, and two for the handling of disputes. Complaints were either to go through the regular compliance machinery, or could be handled by the industry, where an acceptable machinery was set up for this purpose. Labor disputes were to be handled by the code industrial relations board, if such a board (***) existed, in its absence the matter was to go to the appropriate regional board of the N.L.B. This statement of procedures seemed to suggest that complaints would be handled entirely within NRA, and disputes both within and without. However, the matter was further complicated by the provision that complaints also, where not satisfactorily settled, should go to the appropriate regional board of the National Labor Board.

This policy did not contribute much to the clarification of the conflict of the jurisdictions of the National Recovery Administration and the National Labor Board. On the contrary, it may be said to have confused the situation further. On the one hand, it transferred to N.L.B., ultimate jurisdiction over complaints which may have developed, or threatened to develop into disputes. On the other hand, it nibbled away at the jurisdiction conferred upon the N.L.B. by the order of December 16 "to continue to adjust all industrial disputes". The confusion

---

(*) Section 2 (a). See Appendix VI-A

(**) In NRA Bulletin No. 7. "Manual for Adjustment of Complaints, Washington."

(***) In fact, where such boards were established, they incidentially had jurisdiction over labor complaints as well.

would seem to have been only increased by the terms of the two executive orders of February 1 and February 23, 1934, which further emphasized the jurisdiction of the N.L.B. over disputes by specifically granting the board the right to conduct elections, under the majority rule, and by removing from the NRA Compliance Division the right to review the decisions of the N.L.B. (*)

In this stalemate situation, no active effort was made by NRA to set up additional "code" industrial relations boards. However, there was some sentiment on the part of the Labor Advisory Board in favor of the creation of such boards. Matters came to a head with the automobile controversy. The settlement concluded on March 25, 1934, through the intervention of the President, withdrew the jurisdiction over disputes arising in the automobile industry from the N.L.B. and transferred it to the Automobile Labor Board, under the NRA. This action seemed to indicate that from then on, NRA industrial relations boards would play a far more important role in the settlement of labor disputes than the N.L.B.

Responding to this new turn of events, General Johnson on March 30, 1934, issued Administrative Order X-12 (**) which called for the immediate setting up in every code of machinery for the handling of "disputes" as well as "complaints". Those industries whose codes provided for the establishment of such agencies were instructed to carry out these provisions; the others were ordered to establish such agencies. Encouraged by the order, a number of such boards were established. But this number was relatively small, due to the initial active opposition and later reluctant willingness of the Labor Advisory Board, the very agency that had first supported such a program. The opposition of the Labor Advisory Board was based upon the belief that while a program of slow developments of such boards was desirable, a wholesale multiplication of such agencies would hurt more than it would help the interests of labor.

The final stage in this game of "battledore and shuttlecock" occurred with the developments consequent upon the passage of Public Resolution No. 44. (***) Under its authority, the President created the various "special" boards to which jurisdiction over Section 7 (a) disputes in specific industries was given. Thus the power to handle disputes was once more taken away from NRA and given to the National Labor Relations Board, and to the "special" boards, over which the N.L.R.B. had final authority. This new situation made it necessary for the NRA to modify the policy of Administrative Order X-12, which it did in Administrative Order X-69, on July 29, 1933. (****) This new order really amounted to a reversion to the earlier NRA policy announced in

---

(*) See Appendix VI-A

(**) NRA Release No. 4152. See Appendix VI-A

(***) Public Resolution No. 44, 73rd Congress. H. S. Res. 375, June 19, 1934.

(****) NRA Release No. IX-B

NRA Bulletin No. 7, but with what appears to be even further curtailment of the range of NRA's discretion.

With the beginning of NRA's second year there began to emerge some semblance of order from the confusion of the labor board's set-up. Under Public Resolution No. 44, the National Labor Relations Board, and the various "special" boards were given more clearly defined areas of jurisdiction. By the terms of Administrative Order X-69, the scope of the code industrial relations boards was modified to avoid over-lapping with these "joint resolution" boards.

But although the regulation of industrial relations by Government Agencies pursued a smoother course, the conflict of jurisdiction persisted. The executive order establishing the National Labor Relations Board had conferred upon it what was generally interpreted to be discretionary power of review and settlement of disputes not satisfactorily handled by other agencies. (*) In the famous Jennings case, the board found its authority to intervene in "code" industrial disputes challenged (**) by agencies of NRA. This new conflict between NRA and a non-NRA agency was resolved by the President's curtailing on January 22, 1935, the right of the N.L.R.B. to claim either original or review jurisdiction over disputes, where there were appropriate "code" industrial relations boards, possessing the power of "final adjudication".

Although this only specifically removed the newspaper and bituminous coal codes from the jurisdiction of the N.L.R.B., it presented a serious blow to the Board's prestige, which suffered another blow ten days later, when its jurisdiction was removed from the automobile industry by the President's renewal of the Automobile Code on January 31, 1935.

(*) See Appendix VI-B. Section 4 (c) reads as follows: "The National Labor Relations Boards may decline to take cognizance of any labor disputes where there is another means of settlement provided for by agreement, industrial code, or law which has not been utilized." The phrase -- "may decline to take cognizance" was interpreted to carry by implication the right to take cognizance, if it so desired.

(**) 2 N.L.B. 1 - 12. Dean S. Jennings was discharged from the employ of the San Francisco Call Bulletin. He brought the case before N.L.R.B. alleging discharge for union activity. The Board decided in his favor and ordered his reinstatement. The San Francisco Call Bulletin failing to comply, the N.L.R.B. turned the case over to NRA Compliance Division, for Blue Eagle removal. The Compliance Division, instead of following the Board's instruction as was customary procedure, referred the matter to the Newspaper Industrial Board for instructions.

The foregoing account has indicated the several shifts that occurred in Presidential policy with regard to the machinery of Section 7 (a). The initial direction of this policy was toward the repeated strengthening of the National Labor Boards over against the National Recovery Administration. With the automobile settlement this situation was reversed in favor of NRA. The series of new boards ushered in by Public Resolution No. 44 meant the transferral of power back again to non-NRA agencies. This grant of power was in turn curtailed, and NRA restored to relative supremacy, by the outcome of the Jennings Case.

CHAPTER VI

THE "COMMON LAW" OF SECTION 7(a)

Interpretations of Section 7(a) have been of two kinds: "administrative", and "quasi-judicial" interpretations. The first embraces the interpretations of the import of Section 7(a) made by General Johnson as Administrator, and Donald Richberg as Counsel, respectively, of NRA. This position of "perfect neutrality" has been discussed at length in an earlier chapter. The second includes the body of interpretations of Section 7(a) that was developed by the "quasi-judicial" labor boards machinery described in the preceding chapter. This body of decisions has frequently been referred to as representing the significant development of a "common law of Section 7(a)".

The making of these "quasi-judicial" decisions was not conceived to be a part of the functions of the National Labor Board, at the time of its creation. The Board was empowered to "consider, adjust and settle differences and controversies", and its efforts for the first busy month of its existence were devoted to the bringing about of settlements through mediation, a function which it performed with considerable success. The question arose as to what policy the Board should follow where it was unable to secure agreement, and it was decided that the Board would render a decision, containing its findings of facts and recommendations as to steps to be followed to settle the controversy. This led to the stating of the

> "This conclusion was strengthened by the Executive Order creating our Board, which provided that our findings should not be questioned by any other executive agency of the government. This meant that we were in a position to furnish, by a series of opinions, a much needed clarification of the meaning of Section 7(a). Altogether our Board handed down 234 written opinions following closely the precedent contained in the 136 opinions of the National Labor Board.
>
> "The effect of the Executive Order was now to concentrate in our own Board the exclusive interpretation of 7(a)". (*)

The 370 decisions handed down by the two Labor Boards cover a wide range of subjects, of varying degrees of significance. These subjects may be considered as falling into the general categories of matters directly relevant to Section 7(a) interpretation, and "obiter dicta" called forth by situations presented to the Boards. (**)

(*) Lloyd K. Garrison, "The National Labor Board", Annals, American Academy of Political and Social Science March, 1936 p. 138

(**) Detailed classifications of principles followed in decisions are to be found in appendices X-A and X-B

Inasmuch as the Section 7(a) decisions themselves naturally derive their authority from the language of the Act, a consideration of the phraseology of Section 7(a) of NIRA will suggest a workable basis of classification of the decisions of the two Boards. Section 7(a), clauses (1) and (2) it will be recalled, reads:

> "Every code of fair competition, agreement, and license approved, prescribed or issued under this title shall contain the following condditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing."

In interpreting this section, therefore, the Boards had to answer such questions as the following:

1) What does "the right to organize and bargain collectively mean?

2) How shall "representatives of their own choosing" be determined?

3) What constitutes "the interference, restraint or coercion of employers or their agents"?

The Right To Bargain Collectively

Another writer has called attention to the fact that the National Labor Board in approaching the problem of interpretation of the phrase, "employees shall have the right to organize and bargain collectively" had the choice of two possible interpretations, thus:

> "It might have been said that the statute merely protects workers in their right to organize for the purpose of effective bargaining with employers or that the statute requires an employer to bargain collectively with employees and reach an agreement with them. Under the first interpretation, the right to organize is the important fact, and the matter of collective bargaining is an incident; under the second, the employer's duty to make collective agreements is the important fact, and the right to organize is an incident. As will be seen from the subsequent discussion, the Labor Board has tended to adopt the second interpretation." (*)

(*) See W. H. Spencer, Collective Bargaining Under Section 7(a) of the National Industrial Recovery Act, University of Chicago Press, 1935. Chapter III.

There seems to be some evidence, however, that the Board's choice of possible alternatives was in fact foreseen by the Senate in its discussion on the "existing satisfactory relations" amendment, and that the Board in choosing the second of the above-mentioned alternatives, followed the course suggested by the action of the Senate in the course of that debate. (*) It will be recalled that this amendment to Section 7(a) after passage by the Senate, was reconsidered at the request of Senator Norris, and after a heated debate, was defeated by a vote of 46 to 31. The wording of the proposed amendment ran as follows:

> "Provided, that nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm, or corporation, except that the employees of any particular plant, firm or corporation shall have the right to organize for the purpose of collective bargaining (**) with their employer as to wages, hours of labor, and other conditions of employment."

It will be noticed that the underlined phrase reads: "the right to organize for the purpose of collective bargaining". Foreseeing the possibility that such a phrasing might vitiate a strong interpretation of Section 7(a), Senator Costigan on the Senate floor asked to have the words "and bargain collectively" substituted for the words "for the purpose of collective bargaining."(***) This was agreed to by Senator Clark, original proponent of the measure. The requested change was made unnecessary by the subsequent rejection of the entire amendment on the grounds that it would destroy the value of Section 7(a). It thus appears that it was the intention of the Senate at least, that the grant of right of collective bargaining was a primary, rather than a subsidiary purpose of Section 7(a). The National Labor Board in making the employer's duty to make collective agreements the important fact, seems to have acted to carry out the intentions of the Senate.

The Meaning of Collective Bargaining

Basic to the Board's interpretation, was the doctrine that the concept of collective bargaining as written into Section 7(a) implied a "mutuality of obligation".

> "The collective bargaining envisaged by the statute involves a quality of obligation - an obligation on the part of employees to present grievances and demands to the employers before striking, and an obligation on the part of the employer to discuss differences with the representatives of the employees and to exert every reasonable effort to reach an agreement on all matters of dispute."(****)

(*) See pp.41,48 and Appendix III.

(**) Emphasis supplied, see above page 1

(***) See Appendix III

(****) National Lock Company case, N.L.B. Decisions, Part I, p. 19. In the published decision, the wording is that given above. An examination of the original decision, signed by Senator Wagner, indicates that the phrase was intended to read ".....involves a duality of obligation.....". Through a typographical error the word "duality" appeared as"quality". The case cited in this chapter is to be found classified in greater detail in W. H. Spencer, op. cit.

Having held that Section 7(a) places an obligation on the employer ".... to exert every reasonable effort to reach an agreement on all matters of dispute", the Board (*) has in a number of decisions indicated what such an obligation involves. There are a number of elements in its interpretation.

In the first place, representatives are to be recognized. The employer must not refuse (**) to receive at reasonable hours(***) the representatives of his employees for collective bargaining purposes. The representatives are not required to disclose the names of those whom they represent. (****) Employees may choose anyone they wish to represent them (*****); this choice need not be limited to individuals but may also include organizations. (******) An employer may not refuse to receive the representatibe of his employees, simply because he believes their demands are unreasonable.(*******)

Secondly, bargaining must be in "good faith". This means that there is an obligation on the employer, "tender into negotiations with an open mind, to match unacceptable proposals with acceptable proposals, and to exert every reasonable effort to reach an agreement binding for an appropriate term".(********) A mere willingness to discuss demands with employees does not fulfill this obligation. (*********)

Thirdly, the legitimate subjects of collective bargaining are not merely individual grievances, but include "wages, hours and basic working conditions". (**********)

Fourthly, it is the duty of the employer to carry on the bargaining process as described above, with the object of arriving at a bilateral agreement. (***********) Behavious indicating overtly the absence of such an objective has been held to be a violation of Section 7(a). (************) However, the obligation of the employer is not only to bargain collectively when making an agreement, but to do the same before terminating or modifying an agreement.(*************) While a breach of agreement does not of itself constitute a violation of

---

(*)	The term "board" is used here to apply to both the National Labor Board, and its successor, the National Labor Relations Board. Source of decision is indicated by the symbols N.L.B. and N.L.R.B. The latter has no reference to the present statutory board of the same name.
(**)	A. Roth & Company, N.L.B. 75 (1934)
(***)	Ira Wilson & Sons Dairy Company, N.L.B. 15 (1934)
(****)	U.S.L.Battery Corporation, N.L.B. 5 (1934)
(*****)	A. Roth & Company, cited above
(******)	Hall Baking Company, 1 N.L.B. 85 (1934)
(*******)	S. Dresner Sons, 1 N.L.B. 26 (1934)
(********)	Eagle Rubber Company, 1 N.L.R.B. 55 (1934)
(*********)	Atlanta Hosiery Mills, 1.N.L.R.B. 144 (1934)
(**********)	Houde Engineering Corporation, 1.N.L.R.B. 35 (1934)
(***********)	Houde Engineering Corporation, cited above
(************)	Consolidated Film Company, 2 N.L.R.B. 16 (1934); S.Dresner Sons 1 N.L.B. 26 (1934)
(*************).	Columbia Iron Works Company, 1 N.L.R.B. 152 (1934)

Section 7(a), a rapid succession of changing agreements may be evidence of lack of good faith in bargaining. (*) The failure to reach an immediate agreement does not constitute evidence of refusal to bargain collectively. (**)

Finally, the Board has held that the understanding arrived at as the result of the bargaining process should be considered a formal agreement which will govern the relationship of the parties for a definite period (***); although not compulsory, it is strongly desirable that such agreements take a written form. (****) Agreements arrived at cannot be put into effect through the channels of individual contracts, since this would defeat the whole purpose of collective bargaining. (*****)

The Election of Representatives

Since Section 7(a) provided that employees should have the right to organize and bargain collectively, "through representatives of their own choosing", it became necessary to devise a means for the selection of such representatives. The Executive Order of February 1, 1934, empowered the N.L.B. to conduct elections when requested by "a substantial number of employees, or any specific group of employees". (******) Public Resolution No. 44 empowered boards created under its authority - in this case the N.L.R.B. - to order and conduct an election "when it shall appear in the public interest". (*******)

The N.L.R.B. has included in its own interpretation of "the public interest" the authorization of the earlier N.L.B. to conduct an election if requested by a "substantial number of employees", and in one case has held that the request of some eight hundred of a total of thirty-seven hundred eligibles has constituted such a "substantial number". (********)

The Board's interpretation of "the public interest" assumed that an election had been requested by the voters. Where an employer has granted union recognition and has given evidence of bargaining in good faith, the Board will not order an election merely to serve union purposes. (*********) An election has been held to be in the public interest if it will tend to allay friction caused by competition of two organizations,

---

(*) Globman Brothers, Inc. 1 N.L.R.B. 159 (1934)
(**) Boston Mattress Companies, 2 N.L.R.B. 51 (1934); Gordon Bakery Company 1 N.L.R.B. 102 (1934)
(***) Houde, cited above; Bendix Products Corporation, 2 N.L.R.B. 100 (1935)
(****) National Aniline and Chemical Company, 1 N.L.R.B.114 (1934)
(*****) Edward F. Caldwell Company, 1 N.L.R.B. (1934); Los Angeles Railway Corporation 2 N.L.R.B. 68 (1934)
(******) Executive Order #6580, text of which appears in Appendix VI-A.
(*******) Public Res. No. 44 Sec. 2 - Text appears in Appendix VI-B.
(********) Bendix, cited above.
(*********) Omaha and Council Bluffs Street Railway Co., 2 N.L.R.B. 48 (1934)

whose comparative strength is not known. (*) Consistently, the Board has held it to be against the public interest to hold an election which it is believed would cause friction and dissension. (**) It has repeatedly held that an election which will prevent or settle a threatened strike is in the public interest. (***)

Determination of those eligible to vote in an election was another puzzling problem the Board had to solve. Where there has been a campaign of discrimination and discharge of union employees, an election held at the time when the controversy has reached a head, would not adequately meet the "needs" of those who had been discharged; however, one could not consider eligibility as extending to all former employees. The Board has tended to follow the principle of considering eligible all those employed at the time the controversy over self-organization arose, excepting those who may have disqualified themselves by illegal activities.

The Board has indicated the difficulties involved in the selection of an appropriate date for the determination of eligibility. (****) Where there had been a strike, the board usually selected the last payroll preceding the strike, (*****) but extends eligibility to those who may have been discharged for union activities. (******) Where there appears to have been interference with the employees organization activities the Board has chosen a date prior to such interference. (*******) Where there is no question of a strike involved, and where there appears to be no evidence of employer interference the Board has declared eligible to vote all those on the payroll on the day of its election order. (********) Where there is involved the complicating factor of seasonal lay-off, the Board has designated the date on which the petition for elections has been filed as the appropriate one for determining eligibility. (*********)

The ballot is formulated to meet the circumstances of the specific situation. Usually it makes provision for employees to indicate their choice between the outside man and the company union, as their representatives, although sometimes the third choice of individual bargaining is also indicated. Even though the Board may disapprove of the particular method by which any company union has been brought into existence, or conducted, it has always maintained the right of such a union to appear on the ballot (*** ******) and has refused to deny it such a right at the request of the union.(**********)

(*) Firestone Fire and Rubber Co., 2 N.L.R.L. 291 (1935); Steiner Selcater Corp., 2 N.L.R.B. 110 (1935)

(**) Bendix, cited above

(***) B.F.Goodrich Company N.L.R.B. 181 (1934); Firestone cited above

(****) The Kohler Company N.L.R.B. 72 (1934)

(*****) National Lock Company N.L.R.B. 15 (1934)

(******) USL Battery Corporation, 2 N.L.R.B. 5 (1934)

(*******) Kohler, cited above

(********) American Oak Leather Company 2 N.L.R.B. 82 (1935); Bendix cited above

(*********) B.F.Goodrich, cited above; Firestone, cited above

(**********) Firestone, cited above

(***********) Kohler, cited above

The Board has frequently had to face the issue of deciding what constitutes the "appropriate employee unit" for collective bargaining, where there has been a controversy between competing groups as to which constitutes the representative unit. The Board has usually held that the representatives of a given craft constitute the appropriate unit for bargaining purposes where that craft has "traditionally" bargained for members, or where it has peculiar problems requiring special representation. Thus, the Board refused to recognize for separate bargaining purposes, an organization of motor coach operators, who had previously been represented jointly with the street car conductors of the same city. (*) On the other hand, in another case, the Board accorded the right of separate recognition to a group of metal polishers and buffers, on the grounds of skill, separation from other employees in the plant, and concern with health and wage problems requiring special consideration. (**)

The problem presents itself in another form where an employer operates several businesses, or widely separated branches. In such cases the Board has held that the workers in the separate establishments or branches constitute suitable units for the purpose of collective bargaining. In one such case the Board, in granting the separate right of bargaining to two bakeries operated by the same company in the same city, pointed to their physical separation, their definite areas of service, separate management, and separate products. (***)

The Interference of Employers

Section 7(a) provides that employees shall be free from

> "the interference, restraint or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerned activities for the purpose of collective bargaining or other mutual aid or protection."

Hence, the third main line of interpretation of this section by the Labor Board was the definition of what constitutes the "interference, restraint or coercion" on the part of employers with any of the privileges conferred on employees by the statute, namely; (1) choice of representatives, (2) self-organization, (3) other concerted action for the purpose of collective bargaining, (4) other concerted activities for the purposes of mutual aid or protection. Most charges of interference that have come before the Board have dealt with the first two of these categories.

(*) Board of Street Railway Commissioners of the City of Detroit, et al. 1 N.L.R.B. 123 (1934)

(**) Indiana Brass Company 2 N.L.R.B. 127 (1934)

(***) Gordon, cited above

The interference by employers with these statutory rights has taken a wide range of forms. One employer granted an increase in wages, giving the company union credit for obtaining it, just prior to an election which was to determine whether the company union or the outside union was to represent the employees. (*) In another case, a representative of the employees was ejected from the premises when he approached the management for purposes of collective bargaining. (**) In another case, the management of a company prevented the workers from securing a place to hold a union meeting. (***) A case has even arisen where the beneficiaries of a customary practice of a petty philanthropy-free kindling for employees-was restricted, as a result of a labor controversy - to the members of a company union. (***

While an employer may be within his rights in advising his employees as to the meaning of Section 7(a), and even in attempting to persuade them to refrain from joining a labor organization, the exhibition of hostility towards the union has been held as an interference with the right of self-organization. (*****) The calling of workers into the office and subjecting them to a cross-examination as to the union activities of themselves and their fellow workers (******) has been construed as interference. The offer of economic inducement to refrain from union activity, such as a better position, or an actual cash inducement, was held to be a serious form of interference. (*******)

One form of employer interference had been engaged in so widely, that its specific prohibition was made a part of Section 7(a) itself, via clause (2), which reads:

> "(that) no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizaing, or assisting a labor organization of his own choosing."

(*) Houde, cited above.

(**) Joseph E. Corcoran Shoe Company. I.N.L.B. 78 (1934)

(***) United States Smelting, Refining and Mining Company Case. 1 N.L.R.B. 33 (1934)

(****) Case appearing before Chicago Regional Labor Board

(*****) Patrick, Incorporated. 2 NLRB 80 (1934)

(******) Carl Pick Manufacturing Company, 1 NLRB 161 (1934)

(*******) In a case appearing before the Chicago Regional Labor Board.

This clause obliged the Boards to define the term "company union", and to determine under what circumstance it plays a role of interference with self-organization.

While employers have attempted to distinguish employee representation plans from the things called "company union" in Section 7(a), the Board has considered an organization, in which membership is limited to the employees of a single employer, to be a company union as defined in the statute. (*) But regardless of whatever distinction may be drawn between an employee representation plan and a company union, the utilization of either in a manner that interferes with the organization activities of employees, constitutes a violation of Section 7(a).

In a number of cases the Labor Boards have found violations of clause (2) of Section 7(a). They have been either overt interferences, such as endeavouring to secure promises of workers either to join the company union (**), or not to participate in the formation of an outside union (***); or more indirect forms, such as restricting membership in a group insurance plan, formerly open to all employees, to company union members only, or dismissing workers who would not join a company union, pursuant to an alleged contract with the latter, which provided for a closed shop but nothing else. (****)

While the Labor Boards have not passed judgment upon company unions, per se, and have, as noted, (*****) refused to deny them a place on the ballots used in elections, the Boards have criticized the utilization of such organizations in ways thought to interfere with the workers' rights of self-organization. The active inspiration and sponsorship of such organizations, and the grant to them of support has been considered as constituting such interference. But the source of "inspiration" is not always easy to locate; moreover, it is difficult to draw the line between encouragement of company organization that is a legitimate expression of the employers' self-interest, and interference, In the matter of financial or other support, this issue is clear. Where grants by the management to the company union of company time for union purposes, posting privileges, use of premises for meetings and financial remuneration, (******) while similar privileges are derived to the outside union's representatives, has been held as constituting interference.

(*) Tamaqua Underwear Company. 1 N.L.R.B. 10 (1934); Ely and Walker Dry Goods Company. 1 N.L.R.B. 94 (1934)

(**) Danbury and Bethel Fur Company. 1 N.L.R.B. 195 (1934)

(***) Jersey City and Lyndhurst Bus Company. 1 N.L.R.B. (1934)

(****) Tamaqua, cited above.

(*****) See Kohler, cited above.

(******) Kohler, cited above; B. F. Goodrich, cited above.

Discrimination is probably the most frequent form of employer interference with self-organization. It is found expressed in a variety of forms, including lay-off, demotion or transfer, forced resignation, or discharge. The last-mentioned is the most frequent form. The Labor Board have held that by implication, from the language of Section 7(a), the discharge of an employee for union activity constitutes discrimination, and is a violation of the statute. (*) The Board's action in regard to discrimination usually had two phases, first, the determination as to whether there had, in fact, been discrimination as alleged; and second, when discrimination was established, the securing of appropriate redress.

A worker charging discriminatory dismissal had to be prepared to offer circumstantial evidence substantiating that charge; such evidence must tend to show that no basis for his dismissal existed other than union activity. (**) Where employees have failed to show adequate evidence of dismissal for union activity, the Board has not upheld the charge of discrimination. (***) Evidence of employers' hostility toward membership in a union has been accepted as an indication of such discrimination. (****) But where an employer has laid off both union and non-union men, demonstration of an earlier hostility to the union, does not warrant the conclusion of discrimination in the specific case. (*****)

While Section 7(a) does not prohibit a selective policy of lay-off, (******) the laying-off or discharging of workers without regard to their seniority, and replacing them with inexperienced workers has been held as evidence that discrimination has been practiced (*******). Dismissals which were preceded by a constant harassment by employers of their employees' effort at self-organization, or where employees were "spotted" while attending union meetings and subsequently dismissed, (********) or where workers were given a choice of quitting either the union or the company (*********)

(*) General Cigar Company 1 N.L.B. 71 (1934)

(**) Vyn Storage Transfer. 1 N.L.R.B. 142 (1934)

(***) Century Electric Company. 1 N.L.R.B. 79)1934)

(****) Harry Abels Machine Shop. 1 N.L.R.B. 118 (1934); Emery Bird Thayer Drygoods Company case. 1 N.L.R.B. 82.

(*****) Bassett Furniture Company, 1 N.L.R.B. 93 (1934)

(******) Carl Pick, cited above.

(*******) Kawneer Company - 1 N.L.R.B. 60 (1934)

(********) North Shore Coke and Chemical Company - 1 - N.L.R.B. 167

(*********) Wernig Express Company - 1 - N.L.R.B. 51 (1934)

have been held to be clear cases of discrimination.

Where strong presumption, if not conclusive evidence, of discrimination exists, the employer is asked to explain his conduct; if he cannot do so on other grounds, it is concluded that there has in fact been discrimination. (*) A similar conclusion has been arrived at where the explanation offered was obviously unbelievable. (**) Such a case was one in which the employer gave as a reason for dismissal, the lack of work, while at the same time he was employing new men for the same work. (***) Nor does the ability of the employer to point to a past record of collective bargaining serve to controvert the inference of discrimination in specific instances. (****) The presentation of employment records by the employer in justification of his discharge of an employee alleging discrimination has been held as insufficient evidence, in the absence of comparable records of other employees. (*****) Insolence, provoked by the employer's attack on the union, is not a proof of non-discrimination. (******) Also, the suspected radical sympathies of some employees do not constitute a legitimate basis for their discharge. (*******)

Another form of employer interference that has come to the attention of the Board is the resort to lock-outs, shutting down a department, moving the business or closing it permanently. While in one case where workers charged that the management had closed a department to prevent their organization activities, the Board found that the closure was based on sound business reasons (********) in another case where a concern moved from one city where it had a collective agreement with the union, to a nearby city where it resumed operations with new employees, the Board held this to be an interference with self-organization. (*********) Where a company has closed its plant in response to a drive for organization among its workers there has been little that the Board would do in the matter. (**********)

(*) Ira Wilson & Sons Dairy Company 1 N.L.R.B. 15 (1934)

(**) Trenton Mills, Inc. 1 - N.L.R.B. 139 (1934)

(***) Hazel Atlas Glass Company - 2 - N.L.R.B. 40 (1934)

(****) Pacific Gas and Electric Company - 1 - N.L.R.B. 170 (1934)

(*****) Emery Bird Thayer, cited above (1934)

(******) Wabash Fibre Box Company - 1 - N.L.R.B. 147 (1934)

(*******) Charles Pfizer & Company, Inc. - 2 - N.L.R.B. 13 (1934)

(********) Kohler, cited above.

(*********) Maujer Parlor Frame Company - 1 - N.L.R.B. 20 (1934)

(**********) Bear Brand Hosiery Company 2 N.L.R.B. 67 (1934)

The Issue of Majority Rule

One issue that came before the Boards, although not immediately implied in Section 7(a), was of fundamental importance in its interpretation. This was the question of the jurisdication of the "freely chosen representatives" in the conclusion of agreements. Were their agreements to be binding upon only those who selected them leaving minority groups free to conclude separate agreements? Or were the agreements concluded by the representative of the majority to apply to all employees?

This question of "majority rule" became a storm centre of controversy and was the central issue of some of the Boards' most famous decisions. Labor leaders insisted that majority agreement must bind all employees; industry leaders insisted on the right of separate agreements by minorities. The legal status of the matter was further complicated by the bewildering shifts in the power relationships of the various agencies charged with the administration of industrial relations during the first year of the NRA, with the resulting uncertainty as to where ultimate authority resided. (*)

The Labor Boards have held that

> "the representatives selected by the majority of the employees within a given plant, are the sole collective bargaining agency for the plant or department." (**)

This principle was first stated by the National Labor Board, in the Denver Tramway Case, on March 1, 1934. (***) It was emphatically reaffirmed by the National Labor Relations Board in the famous Houde Engineering Corporation case on August 30, 1934. (****)

A brief review of the various factors surrounding this last decision of the Board, will indicate some of the sources of the controversy that raged around its interpretation. Section 7(a) itself gives no clues as to the validity of the majority rule interpretation. The first Labor Board enabling act, the Executive Order of December 16, 1933 (*****) is silent on the subject. A first statement of the majority rule appears in the Executive Order of February 1, 1934, which states by implication that the representatives selected by the majority are to represent all the employees:

(*) Cf. Chapter V.

(**) National Labor Board, Principles Followed in Decisions, See Appendix X-A.

(***) 1 - N.L.B. 64.

(****) N.L.R.B. 35

(*****) No. 6511 See Appendix VI-A

"Thereafter the Board shall publish promptley the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer." (*)

In response to the storm of protest aroused by the release of the Executive Order of February 1, General Johnson and Mr. Donald Richberg issued the joint statement already referred to, in which they set forth their "pluralist" interpretation, of the right of minority groups to deal with the employer separately. This statement, in part read:

"1. The Executive Order provides a method whereby any specific group of employees or all the employees of a plant or of one employer may select, by a majority vote; representatives clearly empowered to act for the majority in their relations with their employer.

"2. This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer.

"3. Section 7(a) affirms the right of employees to organize and bargain collectively through representatives of their own choosing; and such concerted activities can be lawfully carried on by either majority or minority groups, organizaing and selecting such representatives in such manner as they see fit. Also, in affirming this right of collective action the law lays no limitation upon individual action." (**)

This meant a flat conflict of interpretation on this point between NRA and the N.L.B. The disinclination of the N.L.B. to yield its position was indicated by its coming out openly for the first time for the majority rule on the first suitable occasion, after the NRA statement. In the Denver Tramway Corporation Case decided on March 1, 1934, the Board said:

"It is the decision of the National Labor Board that the Amalgamated Association of Street and Electric Railway Employees was selected by a majority of those voting, both as the agency through which the employees of the Denver Tramway Corporation would collectively bargain with the management in negotiating an agreement and in the settlement of any disputes which may arise between it and its employees. Any agreement reached in conformity with this decision must apply alike to all employees of the company." (***)

(*) Executive Order #6580. Par. 7, Cf Appendix VI-A

(**) NRA Release #3125, February 4, 1934. See Appendix VIII where this interpretation is reproduced in full.

(***) 1 N.L.B. 64

This conflict of interpretation between N.L.B. and NRA was apparently decided in favor of the NRA and a serious blow struck at the prestige of the N.L.B., by the President's intervention in the automobile situation, in which the majority rule was ignored. One of the terms of settlement was that groups were to be proportionally represented in the process of bargaining. (*)

It is not very clear from the legislative record of the next few months, just what was the intent of the President and Congress. On the one hand, Congress took no action upon the Wagner Labor Disputes Bill, (**) which expressly applied the majority rule to all industry entering into interstate commerce; on the other hand, Congress did enact the majority rule in passing the revised Railway Labor Board Act. (***) Public Resolution No. 44, passed by Congress on June 16, 1934, authorizing the creation of various boards, has been held to contain the majority rule by implication at least. The uncertainty is further increased by the fact that while the President when he appointed the National Steel Labor Relations Board (****) on June 28, expressly embodied the majority rule; but on June 29, in appointing the National Labor Relations Board, he made no mention of it.

One of the first things the newly created National Labor Relations Board found it had to do, was to decide what its attitude on the majority rule would be. The issue presented itself in the Houde Engineering Corporation Case. The situation was examined into examined into exhaustively; in the words of its chariman - "We devoted to no other case so much thought and discussion as to this one." In view of what was conceived to be the intent of Congress, the precedent of the War Labor Board, and the Railroad Labor Board, the evidence in this specific case, and what appeared to be the logic of the situation, the Board affirmed the principle of the majority rule. The rationale of its position has been well and succinctly stated by Mr. Garrison, as follows:

> "The majority rule starts with the conception of a 'bargaining unit,' which, as the National Labor Relations Act later stated, may be the 'employer unit, craft unit, plan unit, or other unit', to be determined in each case, according to the circumstances, by the board. A unit is simply a particular group of employees whose occupations and activities are so similar that it is logical, practical, or customary to specify the terms of employment of all of them in a single collective bargaining agreement with the employer; example: a plant (like the Houde Company) with homogeneous operations performed by semiskelled workers, and no sharply defined crafts, departments, or specialized groups. For such a unit isnot practical (as the Houde Company conceded) to have anything but a single agreement regulating the hours, the wages, and the working conditions of all for a specified period; you cannot give one group one kind of agreement and another group another where both are doing the same sort of work. With whom, then, should the employer negotiate and make the agreement (assuming that an agreement can be reached) where a

(*) N.Y. Times, March 26, 1934
(**) 73rd Congress, 2nd Session S.2926 March 1, 1934
(***) 48 Stat. L. 284
(****) Executive Order No. 6751, June 28, 1934

majority of the employees in the unit are represented by one organization and the minority by another?

"The common-sense answer is, with the majority organization. And the practical consequences of not making this the rule are obvious. The employer who does not wish to reach an agreement will confer separately with the rival organizations, ad infinitum, playing off one against the other and declining to contract with either because the other has not yet been fully heard from. Moreover, if he is finally prepared to grant a wage increase or some other favor, he will choose to promulgate it through the weaker organization (typically a company union) in order to lessen the prestige of the stronger -- a subtle form of interference with the self-organization of the men. Therefore, if it is desirable to encourage genuine collective bargaining and the making of collective agreements, the employer's responsibility to negotiate with the majority organization alone must be fixed. That these ends are desirable, as promoting industrial peace and economic and social welfare, was the central and expressed assumption of the Recovery Act, and the main purpose of Section 7(a). (*)

While it still remains a source of controbersy, the principle appears to have received legislative acceptance. The Boards decision was announced on August 30, 1934; the majority rule was embodied in the Executive Order creating the Textile Labor Relations Board on September 26, 1934 (**) and again in the National Labor Relations Act passed on July 5, 1935. (***)

(*) Lloyd K. Garrison "The National Labor Boards" Annals, American Academy of Political and Social Science, March 1936 - p.138

(**) Executive Order No. 6858

(***) Public. No. 198 - 74th Congress S.1958

Appendix I - A

LEGISLATIVE HISTORY OF NATIONAL INDUSTRIAL RECOVERY ACT
SEVENTY-THIRD CONGRESS, FIRST SESSION - MARCH - JUNE 1933
(with page references to Congressional Record - Volume 77)

1933

May 17	Message from President (H. Doc. 37) to House, 3603; to Senate, 3549.
	H.R. 5664 and S. 1712: To encourage National industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes. S. 1712 introduced by Mr. Wagner; referred to Committee on Finance, 3550. H.R. 5664 introduced by Mr. Doughton; referred to Committee on Ways and Means, 3611.
May 18-20	Hearings on H.R. 5664 before House Committee on Ways and Means.
May 23	H.R. 5755: To encourage National industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes; without amendment. Reported favorably to House from Committee on Ways and Means (Report No. 159) Referred to the Committee of the whole House on the state of the Union, 4062.
May 25-26	H.R. 5755 made special order of business (H.Res. 160) 4188-4198, debated in House 4201-4234, 4293-4374.
	Amended and passed House, 4373.
May 27	H.R. 5755 Read in Senate; referred to the Committee on Finance, 4406.
May 22, 26, 29, 31 and June 1	Hearings on S. 1712 and H.R. 5755 before Senate Committee on Finance
June 5	H.R. 5755 Reported favorably with amendments to Senate from Finance Committee (Report No. 114), 4496
June 7-9	H.R. 5755 Debated in Senate 5151-52,-84, 5227-53,-55,-72, 78,-89, 5349-63,-77,-98, 5402-11,-54
June 9	Amended and passed Senate, 5425
	Senate names its conferees: Senators Harrison, King, George, Reed and Keyes, 5425

1933

June 10 — House names its conferees: Representatives Doughton, Ragon, Samuel Hill, Treadway, and Bachrach, 5638

Conference Report submitted in Senate, 5620: in House (H. Rept. 243), 5692.

June 12-13 — Conference Report debated in Senate 5764, 5834, 5849, 5853; Agreed to, 5861.

Bills examined and signed, Senate 5863 - House 5919

June 14 — H.R. 5755 Printed as Senate Document No. 76, 6020. Presented to the President, 6047.

June 15 — Presidential approval of H.R. 5755 reported to House, 6198.

June 16, 1933 — H. R. 5755 signed by President - 11:55 A.M.

APPENDIX I-B

LEGISLATIVE DOCUMENTATION OF NATIONAL INDUSTRIAL RECOVERY ACT

-1-

As introduced in House

73rd Congress 1st Session H.R. 5664. In the House of Representatives, May 17, 1933, Mr. Doughton introduced the following bill; which was referred to the Committee on Ways and Means and ordered to be printed. A Bill to encourage national industrial recovery to foster fair competition and to provide for the construction of certain useful public works and for other purposes.

-2-

As introduced in Senate

73rd Congress 1st Session S. 1712. In the Senate of the United States, May 15 (Calendar day, May 17) 1933. Mr. Wagner introduced the following bill which was read twice and referred to the Committee on Finance. A Bill to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works and for other purposes.

-3-

House Committee Hearings.

National Industrial Recovery. Hearings before the Committee on Ways and Means, House of Representatives, 73rd Congress 1st Session on H.R. 5664. A Bill to encourage National Industrial Recovery to foster fair competition, and to provide for the construction of certain useful Public Works and for other purposes.

-4-

As reported to House

Union Calendar No. 42. 73rd Congress 1st Session H.R. 5755 (Report No. 159). In the House of Representatives, May 23, 1933 Mr. Doughton introduced the following bill, which was referred to the Committee on Ways and Means and ordered to be printed. May 23, 1933, Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

-5-

House Committee Report

73rd Congress 1st Session House of Representatives. Report No. 159. National Industrial Recovery Bill May 23, 1933. Committed to Committee of the whole House on the State of the Union and ordered to be printed. Mr. Doughton, from the Committee on Ways and Means, submitted the following Report. (To accompany H.R. 5755)

-6-

As passed in House

73rd Congress 1st Session, H.R. 5755. In the Senate of the United States May 15 (calendar day May 27), 1933. Referred to Committee on Finance.

-7-

Senate Committee Hearings

National Industrial Recovery. Hearings before the Committee on Finance, United States Senate, 73rd Congress 1st Session on S. 1712 and H.R. 5755. Bills to encourage National Industrial Recovery to foster fair competition, and to provide for the construction of certain useful Public Works and for other purposes.

-8-

As Reported to Senate

Calendar No. 130. 73rd Congress 1st Session H.R. 5755 (Report No. 114) In the Senate of the United States May 15 (calendar day, May 27), 1933. Referred to the Committee on Finance May 29 (calendar day, June 5), 1933. Reported by Mr. Harrison with amendments.

-9-

Senate Committee Report

Calendar No. 130. 73rd Congress, 1st Session. Senate Report No. 114. National Industrial Recovery Bill. May 29 (calendar day, June 5), 1933. Ordered to be printed Mr. Harrison, from the Committee on Finance submitted the following Report (To accompany H.R. 5755)

-10-

As Passed by Senate

73rd Congress 1st Session H.R. 5755. In the Senate of the United States June 6 (calendar day, June 9), 1933 Ordered to be printed with the amendment of Senate numbered.

-11-

Conference Report

73rd Congress 1st Session. House of Representatives, Report No. 243. National Industrial Recovery, June 10, 1933. Ordered to be printed. Mr. Doughton, from the Committee of conference, submitted the following CONFERENCE REPORT (To accompany H.R. 5755).

-12-

As agreed to in Conference

73rd Congress 1st Session Senate Document No. 76
National Industrial Recovery Act. H.R. 5755
An Act to encourage National Industrial Recovery to foster fair competition and to provide for the construction of certain useful public works and for other purposes as agreed to in Conference.

(Public - No. 67 - 73rd Congress) (H.R. 5755)

As Law

An Act, to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes. Approved, June 16, 1933, 11:55 A.M.

APPENDIX II-A

STATEMENT OF HONORABLE ROBERT F. WAGNER,
UNITED STATES SENATOR FROM NEW YORK (*)

Senator Wagner - Mr. Chairman and gentlemen, this bill is essentially an employment measure. Its object is to bring about an increase of employment at a level of wages which will afford a standard of living in decency and comfort.

The methods of accomplishing this object are, first, through cooperative action within industry itself, and, second, by direct Government expenditure on public works.

I believe, too, that in addition it is going to improve and strengthen the ethics within industry itself by doing away with the sweatshop, the kind of competition which has been tearing down industry and where in self-defense frequently they have been required to reduce wages below a standard of decency.

In that way it is going to have not only a great economic effect by increasing purchasing power, but also a great social effect in giving the worker a wage which will permit him to live in decency, something that he feels and I feel he is entitled to under our economic system.

The first title of the bill is devoted to the stimulation of employment through private cooperative effort. The declaration of policy sets forth the existing national emergency which has produced widespread unemployment and disorganization of industry and is undermining the standards of living of the American people. It also establishes the constitutional bases upon which title I of the bill is erected. Constitutionally, title I is founded upon the interstate commerce clause and the general welfare clause of the Constitution. The declaration of emergency bears upon both of these constitutional grounds. Obviously, the conditions produced by the emergency affect the general welfare. It is equally plain that by reason of the emergency many commercial and industrial practices -- and I think this is important, gentlemen -- by reason of the emergency, many commercial and industrial practices become a burden upon interstate commerce which in normal timeswould perhaps not be so regarded.

That is what I mean by giving us a much wider area under emergency legislation in which the public welfare is affected. Lastly, the declaration of policy establishes the standards which serve as the guide to the quasi-legislative authority which is delegated to the President. These standards are the elimination of unfair competitive practices,

---

(*) 73rd Congress, 1st Session, National Industrial Recovery Hearings on H.R. 5664 before House Ways and Means Committee, May 19, 1933, pp. 91-98.

the reduction and relief of unemployment, the improvement of standards of labor, the rehabilitation of industry, and the conservation of natural resources.

The authority conferred by the bill is centralized in the President. He is given the power to designate or create the agencies that are to be used in carrying out the purposes of the title and to delegate his functions to such officers and agents as he may designate.

As to the method: The purposes of the bill are carried into effect through five principal methods -- of course, I realize that in many respects I am repeating what has been so much more ably presented already by the Director of the Budget, Mr. Douglas, and Mr. Richberg. But there is no other way of making a logical presentation, it seems to me.

As I said, the purposes of the bill are to be carried into effect through five principal methods:

First. Voluntary codes.

Second. Voluntary agreements -- that is, within industry, of course.

Third. Limited codes -- that is, limited in two ways; hours of labor and wages.

Fourth. Codes imposed by the President. Those are what we might call the compulsory codes.

Fifth. The method of licensing, which, perhaps, will only be used in extreme cases. I am sure that that is so.

Now, this is important, gentlemen: The emphasis of the bill is upon the voluntary codes; industry given an opportunity which it has sought and I think is entitled to, to govern itself wherever they initiate such self government.

Section 7, of the bill authorizes any trade or industrial association or group to prepare and submit to the President for approval a code of fair competition which is intended to govern competitive practices within the trade or industry represented. The trade or industry is thus given the opportunity to exercise its own initiative in formulating its standards. Approval of such a code is conditioned upon the following findings -- that is, these findings must be in the proposed code:

First. That the association or group admits equitably to membership all who are engaged in the same trade or industry.

Second. That it is truly representative of the trade or industry for which it speaks.

Third. That the code presented will not promote a monopoly. That is a very important protective feature of the bill.

Fourth. That it will not oppress or discriminate against small enterprises. As a matter of fact, my view is that this bill is more protective of the small enterprises, because the large ones rarely need governmental aid in that direction.

Fifth. That employees shall have the right to organize and bargain collectively through representatives of their own choosing, which is an important protection for the labor organization and one for which I have been contending for a long while, both in legislative bodies and also as a practicing attorney.

Sixth. That no employee will be required as a condition of employment to sign an antiunion contract. That outlaws the so-called "yellow-dog contract," which I think we have already done when we passed the anti-injunction act, which is now law. It is something which ought to be forever wiped out of our economic life. It is un-American.

Seventh. That the employers will comply with the maximum hours of labor and minimum wage of pay and standards for other working conditions approved or prescribed by the President.

Eighth. That the code will tend to effectuate the policy of the title.

When such a code is approved it becomes effective for the entire trade or industry or subdivision thereof to which it applies. Thereafter the code and any action complying with its provisions are exempt from the provisions of the antitrust laws. Of course, without that provision the bill would be absolutely a mere gesture and ineffective. This exemption, it should be noted, is not a general one, but is limited to those acts which are in compliance with the requirements of the code.

Now, gentlemen, there are certain sanctions, because this law, like laws of like character, becomes ineffective without sanctions.

Violation of any of the provisions of a code by anyone engaged in interstate commerce or in business affecting interstate commerce constitutes an unfair method of competition. It may be enforced first by a criminal proceeding. The bill makes the violation of any provision of the code a misdemeanor punishable by a fine of $500. Secondly, it may be enforced by an injunction proceeding in the Federal courts, similar to the cease and desist provisions of the Federal Trade Commission Act.

As to the agreements: Section 4 authorizes the President to enter into and approve voluntary agreements relating to a trade or industry. These agreements need not apply to an entire trade or industry and do not bind any except those who are parties to the agreement. Every agreement, however, is subject to all of the conditions recited with respect to codes except those having reference to the membership in trade associations or groups.

As to the limited codes: A limited code of fair competition is one dealing solely with maximum hours of labor, minimum rates of pay

and working conditions in a trade or industry. The proposed act provides for such limited codes where perhaps for some reason or other a general code of fair competition may not be necessary, or it may be had in addition thereto. Then, of course, it becomes part of the general code.

Codes imposed by the President: In addition to the power to approve codes and make agreements, the President is authorized to prescribe codes of fair competition in any trade or industry where for any reason the trade or industry cannot or will not cooperate in the preparation of a voluntary code. My own prediction is, there will not be many of those cases, but it is a necessary provision, it seems to me, to make this act enforceable.

As to licenses: The President is further authorized to license business enterprises whenever he finds it necessary to make effective a code of fair competition or an agreement or otherwise to carry into effect the policy of the title. The bill provides for public notice and hearing before a trade or industry may be subjected to license. After a trade or industry has been subjected to license no one may engage in or carry on such trade in interstate commerce or in transactions affecting interstate commerce without first obtaining a license on penalty of $500 fine or 6 months' imprisonment or both.

There we cover completely, it seems to me, the constitutional objections that may be urged, because the license shall only be issued in cases where the industry either is engaged in interstate commerce or is so engaged as to be a burden upon or affecting interstate commerce. That field, as the attorneys who have been studying the trend of decisions on these social and economic questions will tell you, is getting to be a field that we can reach more easily; the area is increasing all the time. That should be so because of our economic interdependence of the States. Somebody suggested the other day that there is hardly a commodity that you can take, that is manufactured in any State, which, when you separate its ingredients, you will find that three-fourths of the ingredients of the manufactured articles have come across the border in interstate commerce. I think that this very thing is going to broaden our concept of what may be reached by Federal legislative acts in regulating our economic life. It is bound to be so, because of our economic interdependence. Federal legislation affecting our economic system cannot be, it seems to me, effective unless it has universal application.

The labor provisions mentioned under voluntary codes are equally a part of the codes imposed by the President by agreements and licenses.

The bill makes the following provisions respecting the determination of hours, wages, and labor standards:

A. Where the right to collective bargaining prevails employers and employees are given the first opportunity to agree upon maximum hours, minimum rates of pay, and other working conditions. That is, those mutual agreements can only be recognized where these rights of labor to collectively bargain prevail. When such agreement is approved by the President it acquires the character of a code.

B. Where no agreement can be reached or has been approved, the President is authorized to investigate and to prescribe by way of a limited code or as part of a general code the standard of hours, wages and conditions.

Of course, in those cases, in his investigation he must take into consideration the locality, difference in the cost of living in certain localities, and other matters which enter into a determination of hours and wages and conditions, with which we are all familiar.

This bill goes out of effect at the end of two years or sooner if the President declares that the emergency has ended.

Section 2 (b) authorizes the President to establish an industrial planning and research agency to aid in carrying out his functions under the title. That is a very important provision of the act, although it has not been emphasized. I am a great believer in that kind of research work, the collection of accurate statistics upon which to base action. You cannot come to intelligent conclusions in our economic life without ample information and statistics.

Also, may I emphasize here that I think this bill is important as the first step toward that which the liberals of the country have been preparing for years. It was a part of the platform of the 1912 Progressive Party, namely, the necessity of a national planned economy. Until we have that, I venture to say that we are not going to have an orderly organized economic system. A good deal of the chaos and disorganization from which we are suffering now is due to this lack of planning. As a matter of fact, I think the greater part of it is due to that. Of course, some of it has to do with the international shocks that we have suffered from. But I think primarily it is due to the other cause that I have mentioned, because heretofore we have survived severe economic depressions in other countries, that did not affect us at all. But with a properly planned economic system, we could have withstood the shocks from abroad. We have got plenty in the midst of all this starvation that we are witnessing. It is a paradox. And the explanation is that we have not known how to plan.

Section 6. (c) directs the Federal Trade Commission, upon the request of the President, to make such investigations as may be necessary for the purposes of this title.

Section 9 (a) confers upon the President the power to make rules and regulations, which, of course, is a very important feature of this bill.

Section 9 (a) authorizes the President to impose fees for the filing of licenses or codes.

Section 9 (b) authorizes the President to modify or cancel any action taken by him under the title.

Section 8 provides that this act shall not be construed to repeal or modify the Agricultural Adjustment Act.

Now, there are some general considerations to which I wish to direct the attention of the committee. This bill makes explicit the principle that all business is affected with the public interest. Heretofore we have, except in the field of public utilities, relied upon competition alone to protect the public interest. In order to preserve competition Congress has at various times since 1890 passed a whole group of statutes, commonly referred to as the antitrust laws. This bill is not intended to divert us from the purposes of that legislation. It is intended to supplement it.

The purpose of the present bill is not to abolish competition but to lift its standards and to raise its plane so as to eliminate destructive practices, unfair practices, competition in the reduction of wages, and the lengthening of hours. In other words, efficiency, rather than the ability to sweat labor and undermine living standards, will be the determining factor in business success.

Through the cooperative action made possible and lawful under this bill industry may for the first time effectively do many of the following things: I am not going to read them all, Mr. Chairman and gentlemen, but industry, as you know, has attempted to provide for market research and analysis; cooperative marketing and sales promotion; product research; development of sound intra-industrial relations; budgeting; simplification and standardization.

But, of course, with the law as it is today they have been discouraged in that sort of activity. And for another reason, that they could reach no definite conclusion or agree upon no particular conclusion as to production and hours of labor, without violation of the anti-trust laws. Now they can do these things effectively under the provisions of this bill so as to make a real contribution, in my opinion, to progress.

In addition, they may engage in numerous other cooperative devices, subject to the approval and supervision of the President.

At the present time it is frequently the person with the lowest industrial standards who determines the standard for the entire industry. The purpose of this measure is to make the best judgment and the highest ideals of the industry govern its competitive activities. That is very important and we must accept it as true. It largely accounts, in my opinion -- and I am sure that the members of the committee are cognizant of it -- for the tremendous support which is being mobilized throughout the country for this legislation. They see in it at least a hope that this cutthroat competition which has been dragging us down, reducing our standards of living may be for all time eliminated, and we may go along on a higher standard of living. That will be a great contribution toward the happiness of the American people.

As I have said, the purpose of this measure is to make the best judgment and the highest ideals in the industry govern its competitive activities, replacing the new low standard of sweatshop, cut-throat competition.

Title II has to do with public works. The purpose of title II is to create direct and indirect employment for several million men and women through the launching of a $3,300,000,000 public construction program.

In 1930, Federal, State, and local public construction amounted to $3,357,000,000. In 1931 it fell to $2,960,000,000. In 1932 it fell to $1,880,000,000. That is a drop from $3,357,000,000.

It is obvious that a great deal of construction work normally carried on by the States, counties, and municipalities as part of their regular program of development has been suspended and that, largely by reason of the fact that funds could not be obtained for the purpose. The accumulated deficit in public construction for 1931 and 1932 alone amounts to almost 2 billion dollars. That has had a tremendous effect upon one of our major industries, the construction industry of the country. You can easily see how that must have dragged us down. To that should be added the public construction that would normally be done in 1933. It is obvious that there is a vast reservoir of necessary, useful projects waiting to be done. It should be done now, when costs are low and for the more important reason that as many as two-thirds of the 2½ million construction workers are out of employment. Think of that. In the construction industry alone two-thirds of 2½ million workers are out of employment.

The degree of unemployment in some of the industries supplying construction is even more intense. For instance, in the manufacture of brick tile, and terra cotta, on January 15 last, the Bureau of Labor Statistics reports that the number of employees averaged less than 20 per cent. Just think of that -- upward of less than 8 per cent of the average for 1926. That is a deplorable situation which we cannot look at with complacency.

The program contemplated by the bill is in general language set forth in section 202. Special provision is made for construction on the Federal-aid highway system for which an amount not in excess of $400,000,000 may be allocated, to be apportioned to the several States, three-fourths on the basis of the Federal Aid Highway Act and one-fourth on the basis of population. Of course, these funds need not be matched by the States.

The construction program may be prosecuted by the President through the Federal emergency administration of public works, or through such other agencies as he may designate. Here again, authority is centralized so as to avoid delays which have thwarted previous attempts to relieve unemployment through public construction.

The bill authorizes the President to engage in the construction directly, to make loans, or otherwise finance such construction upon reasonable security, and to make grants to States, municipalities, and other public bodies in an amount not exceeding 30 per cent of the cost of labor and materials employed upon the project.

I am sure that Congressman Vinson is persuaded now that we have increased tremendously the rea over which loans may be made by the President or the administrator to municipalities. Then, we have removed the

limitation as to self-liquidation. As the bill was intended, and as I am sure it reads now, it embraces any public works of a municipality, State, or subdivision of a State or the Federal Government. There is no limitation at all except the discretion of the President or the administrator.

In order to make available the maximum number of jobs in connection with the construction program, the bill provides for the 30-hour week upon all projects constructed or financed under the bill. It also provides for the payment of wages sufficient to provide a standard of living in decency and comfort; it prohibits the use of convict labor and confers a preference upon ex-service men with dependents.

Funds necessary for the construction program are to be raised through borrowing by the Federal Government, and provision is made for the imposition of a special tax to pay interest and principal.

Of course, that is a great question upon which I cannot enlighten the experts of this committee. I cannot enlighten the committee upon that question, because I have no particular views, but I do appreciate the necessity of imposing some tax. I think it is absolutely essential that we impose a tax to amortize these bonds, in order that there may be no question as to their sale at this time. If there were a failure to sell bonds, it would be a most unfortunate thing, and might cause another recession.

Next, we have, together with industry, included a provision in the bill giving industry a chance to cooperate within itself, and to organize within itself so as to do away with cut-throat competition. Then we provide for a large public works program, which directly or indirectly will easily put 3,000,000 men to work. When that is done, you know what it will mean. In a short time those men begin to purchase necessities, such as clothes, shoes, and other like things, and that, in turn, will put another million or two people to work.

Therefore the upward turn will undoubtedly come. I have slept with this subject for years, and I am persuaded that this will be the thing which will serve to prime the pump and that will begin to sustain the upward movement for the absorption of the unemployed. Of course, I am one of those radicals who believe that some day the right to work will be recognized as the right to live is recognized today. We are going in that direction now. Otherwise there is no reason for organized society at all.

The power to enter upon new construction under this bill, or make loans or grants, will terminate at the end of 2 years, or sooner if the President shall declare the emergency ended.

The President is authorized, however, to continue to issue funds to a borrower prior to January 23, 1939, under the terms of an agreement entered into prior to the date of termination of the President's power to make loans. In other words, he may pay installments upon the loans actually made prior to the expiration of the act.

The rest of the matter I have here I will not go over, because it is in explanation of the details of the bill, and I am sure that you are all familiar with that.

The Chairman. How much further time do you want, Senator?

Senator Wagner. I have finished, Mr. Chairman.

APPENDIX II-B

STATEMENT BY WILLIAM GREEN, PRESIDENT,
AMERICAN FEDERATION OF LABOR. (*)

Mr. Green. Mr. Chairman and honorable members of the committee, I am very pleased to come here this morning at your invitation and submit to you the views of labor regarding the proposed industrial recovery act.

First, may I pay a just compliment to my good friend, that faithful public servant, Senator Wagner. I know he must be happy, as his friends all are, because he apparently sees his hope as practically realized. He has almost stood alone for a number of years in fighting for unemployment relief, and for the establishment of a more sound, modern economic order. While some have faltered by the wayside in giving him support, he has been like a voice in the wilderness, urging upon Congress the enactment of legislation that would, in operation, drain our pool of unemployment, and I know that is the purpose of this bill.

Labor appreciates, more than language can express, the very fine, devoted loyal public service Senator Wagner has rendered.

I desire to submit the following amendments, Mr. Chairman, to the Industrial Recovery Act, trusting that these amendments will meet with your approval and be accepted.

After the word "choosing" in line 20, page 7, insert the following:

> And shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organizations or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The amended section would then read:

> That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organizations or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This amendment does not include within it any form of new legislation. It is a verbatim statement taken from the declared public policy of the Government as set forth in the Norris-LaGuardia anti-injunction law. Congress adopted this declaration by an overwhelming

(*) 73rd Congress. 1st Session, National Industrial Recovery, Hearings on H.R. 5664 before House Ways and Means Committee, May 19, 1933, pp. 117-121.

vote when it passed the Norris-LaGuardia Act. It is now a part of the law of the land. We ask, labor asks, that it be included in this emergency legislation. Labor believes it necessary in order to confirm and emphasize the guaranty of the right of organization and of the exercise of collective bargaining.

I am only refreshing your memories, members of the committee, when I call your attention to the declared public policy of the Government as set forth in the Norris-LaGuardia Act. That, it seems to me, is a declaration that has been accepted and is in effect and can be incorporated in this legislation. There will be no departure from policies heretofore pursued; we are not asking that something new be incorporated, but that we lift out of that declared public policy this section and include it in this emergency legislation, for the reason that labor will then feel better satisfied that its right to organize is really guaranteed, and that it will be permitted to exercise freedom of action in that direction.

Also, on line 23, page 7, we suggest that you substitute the words "company union" for the word "organization" appearing at the beginning of the line.

It is the opinion of the representatives of the American Federation of Labor that this amendment would make clear and definite the real meaning and purpose of this part of the act.

I think, if I could interrogate the committee who were engaged in drafting this section that they would admit that they had in mind the purpose expressed by the words I have suggested as an amendment to this section of the act.

Labor has been faced with this problem, that corporations set up their own company unions. These unions are the creatures of the corporation, and function only at the will of the industrial corporation.

Many workers are required, as a condition of employment, to join a company union. When they become members of that company union then the corporation is secure, because it simply deals with itself. We want to avoid that very thing.

If the workers are permitted to join a labor union it ought to be a free, independent labor union, and not a union, or a so-called "union", through which a corporation may exercise full and complete control, not only of its own industrial affairs, but of the economic life and social life of the workers.

The organization we have in mind is the company union, and we should like that this section of the act be made clear in that respect.

If the industrial recovery act is amended, as herein suggested, labor will extent to this proposed legislation its full, complete, and hearty endorsement.

I am firmly of the opinion that through the exercise of the authority vested in the association of employers and groups of employers, and the further exercise of the controlling power vested in the President of the United States, the 6-hour day and the 5-day work week can become established and operative in the principal industries of the Nation.

Obviously the bill confers upon the President of the United States most unusual, broad, extraordinary powers. Labor is thoroughly conscious of this fact. Justification for such a proposal is found in the existing emergency. Because it is emergency legislation it is quite proper that such extraordinary powers be vested in the President if economic recovery depends upon the exercise of such unusual power.

The public-works program, provided for in the act, ought to be amended so as to include the expenditure of a sum not less than five billion of dollars. If a public-work project in which $5,000,000,000 was expended in carrying forward public improvement and public work in every State, city, town, and section of the Nation was launched simultaneously, industry would be revived and industrial recovery would be constructively promoted. The public-works program will supplement the development of industrial activity which is bound to take place under the inspiration of the legislation provided for in the Industrial Recovery Act.

With the amendments which I have herein suggested accepted and incorporated in the bill, labor gives unqualified support to this proposed legislation. Along with its friends, it hails this suggested legislative step as a definite advance toward economic recovery.

There is just one other point that I desire to touch upon in expressing my opinion regarding this section of the proposed legislation. I should like the committee to understand that the suggestion I am offering is my personal suggestion. It is not original with me. It comes out of discussion that I have had with men who have had a wide experience not only in the personnel sections of large corporations but in the industrial sections as well.

The real objective sought through the operation of this proposed legislation is to strike fairly and squarely at the heart of unemployment and economic disorder. What Senator Wagner desires to do and what his friends hope to realize and what Congress, I think, wishes to see is this: that the pools of unemployment be drained so far as possible wherever these pools exist, let it be in the most remote community or in the largest city in the land. In other words, we are trying to tackle through this legislation this dreadful scourge of unemployment that has so afflicted the Nation for almost 4 years.

If that is the case, then why not develop a useful public-works program in every State, city, incorporated village, and hamlet within the Nation? The virtue of such a plan as that is to bring employment into the cities, and the villages, and the towns rather than to take the unemployed from the villages and the towns to some remote section where some Federal project may be carried on. Under that plan you preserve family life. You benefit every merchant, every industrialist, every

professional citizen. You take the work to the community rather than taking the men who are idle in the community out into some remote section to carry on flood-control work, reforestation, soil-erosion work, and road building.

If those premises are sound, why not use this money appropriated for public works in this way? Let the authority of the President be exercised so that outright grants from this appropriation will be made to any city or town in the country that will develop a useful public-works program, a project that can be approved by the planning authority appointed by the Federal Government.

Instead of making the grant of 30 percent to many impoverished cities where taxes are now so high that it would be impossible for the city to even raise 20 percent more to match the Federal grant by an equal amount, make them an unqualified grant; prepare your program, send it in, and utilize it to put the people to work in your city and your town.

It seems to me that that is a suggestion that can be well considered by this committee.

If I may make a personal recommendation along that line, it would be to amend the section by striking out the 30 percent grant and simply giving the President authority to make an outright, complete grant for the purpose of taking care of any useful, public-work project in any city where the community is willing to originate such a public-works project and carry it on.

As I say, the money out of which to pay this must come from the taxpayers of the Nation. Everybody must contribute in this great emergency. Why not let us use the money collected from the family, which is the Nation, to help every unit of the family in every city and town and hamlet and village throughout the Nation?

I know that that will be a departure from the old policy of imposing costs for local improvements upon the local community. But this bill in itself is a departure from the traditional policy which the people of our Government have always pursued, and if we are to strike at the heart of unemployment, direct and straight, and drain the reservoirs, the pools of unemployment wherever they are found, let us take the money there and give the idle work in their own homes. If we are going to spend this money can we spend it in any better way?

I am glad to offer these suggestions for your consideration. I think this last suggestion is a very meritorious one. I realize that the Federal Government can exercise control over these public-works projects. They can prevent any unnecessary project being launched, through the authority that they have; they can see that the plan comes up to specifications, and it must meet the requirements of the planning board, whoever or whatever that may be. It must be a worthy, commendable public-works project. In that way you will have all the towns and cities active. They will all be ready to start something. You will revive hope. You will put people to work at home where they will spend the money with a merchant in their home town, in their community.

Gentlemen, I have completed my statement.

APPENDIX II-C

EXCERPT FROM TESTIMONY OF MR. DONALD R. RICHBERG (*)

Senator LA FOLLETTE: "May I direct your attention to section (b) on page 4? Why would not labor be included in lines 12 to 14?"

MR. RICHBERG: "Because the code, as a matter of fact, Senator, would not be made as a code affecting labor participation. It would be a management's code concerning operations of management in the industry, as I understand it."

Senator LA FOLLETTE: "I understood that these groups are required to be truly representative."

Mr. RICHBERG: "That is true."

Senator LA FOLLETTE: "Does not that contemplate that labor is to be represented?"

Mr. RICHBERG: "The contemplation of this particular section is, I think--- although it is not so stated ---that the code of an industry is ordinarily, as far as it's practices are concerned with the management of operations, to be representative of management. But in that code there is a requirement that the employees shall have the right of organization and collective bargaining, which means that the employees would have in such an industry the right to bargain with the management as to the terms or conditions affecting labor."

Senator LA FOLLETTE: "I am very much interested in that point, because I have given some consideration to the establishment of some kind of planning, and do I understand you to say that in requiring that these groups that are to be formulated are to be representative --- that you do not contemplate that labor is to participate in or to have representation in those groups in formulating the code?"

Mr. RICHBERG: "I would say that insofar as the code only dealt with management problems, as to marketing or production, it would not necessarily follow that there would be labor representation in there."

Senator LA FOLLETTE: "I understand that if you have some particular phase of a code, but if you are drawing up a code, let us say to establish practices which shall be considered fair or unfair in the steel industry, do you not envision that labor would be represented in drawing up those codes, insofar as they relate to working practices, either fair or unfair in relation to employment?"

(*) 73rd Congress, 1st Session, National Industrial Recovery, Hearings on S. 1712 and H.R. 5755 before the Senate Finance Committee, May 22, 1933, p. 26-27. The passage referred to by Senator La Follette is the last sentence of Section 3 (b) of the Act, and reads as follows: "The violation of any provision of any such code shall be a misdemeanor and upon conviction thereof, an offender shall be fined not more than $500 for each offense."

Mr. RICHBERG: "I have this vision of it, and that is that either labor will participate in the drawing up of such codes, or that labor will participate in the consideration as to whether such codes are fair, and perhaps management will regard it as desirable to have labor participate at the first stage rather than the second."

Senator LA FOLLETTE: "Certainly it is within our power to require that under this bill, is it not?"

Mr. RICHBERG: "It is within the power of the Senate to require such representation as to make this code representative of the industry."

Senator LA FOLLETTE: "And is it not possible that in formulating these codes, insofar as they relate to practices or otherwise, in employment, that labor would not be represented in drawing up those agreements?"

Mr. RICHBERG: "I say it would be either a choice of labor participation in the original preparation or labor participation in the consideration of the codes. Unfortunately there is such an attitude toward labor in many industries that perhaps the easiest practical method is to work out a labor correction code, which is a code of what is unfair rather than original labor participation. In some instances they do those things."

Senator CONNALLY: "A sort of veto power."

Mr. RICHBERG: "No; not a veto power. May I make an illustration of the so-called "railroad bill" which is now before Congress, in which labor organizations there fought for participation in the planning. It was objected to on the part of management, but an amendment has been considered by the committee concerning those plans to give representation to labor up to a part of the planning. That is not a veto power, but it is a consideration."

APPENDIX II - D

EXCERPT FROM
STATEMENT OF JAMES A. EMERY, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS (*)

* *
* * * * * * * * * * * * * * * *

MR. EMERY: What may be included in codes of fair competition or permissible agreements is not defined in the bill but rests in the discretion of the administrator, upon the meaning which may be given to the term"fair competition" in the light of the objectives of the mmeasure. This generality is subject to one specific and definite exception. By Section 7 (a) every code, agreement, or license must contain certain conditions with respect to employment relations.

In the bill as introduced this requires employers to recognize the right of employees to organize and bargain collectively through representatives of their own choosing and not be required as a condition of employment to join any organization or refrain from joining a labor organization of their own choosing. Employers are further required to agree to observe maximum hours of labor and minimum rates of pay and working conditions prescribed by the President. By an act made in the House bill the employer and his agents are required to refrain from any interference with or coercion in the organization of labor and the employee may not be required to join "a company union."

SENATOR WAGNER: In reference to these three provisions, you have in mind the so-called "yellow-dog contract"?

MR.EMERY: I have in mind the three provisions which are inserted in Section 7.

SENATOR GEORGE: Your position is that those provisions must affirmatively appear in each one of these provisions?

MR. EMERY: Yes, Sir. These must affirmatively appear.

SENATOR WAGNER: Are not these three conditions merely the establishment of a right to the worker; that is, if he cares to exercise it he he shall have the right of collective bargaining, and then the other thing, which Congress has already done; that is, to outlaw the yellow-dog contract in the Norris Anti-injunction Act?

MR. EMERY: That is what is described an act which has withdrawn from enforcement in the Federal Courts the power of injunction

(*) 73rd Congress, 1st Session, National Industrial Recovery Hearings on S. 1712 and H. R. 5755, before the Senate Finance Committee, May 29, 1933, pp. 283-301

SENATOR WAGNER: Well, it says the contract is one against public policy.

MR. EMERY: Thus, while employers as such are assured of no protection in the discharge of their onerous obligations, but must place their trust wholly in the administrator, it is sought to twist the pending legislation into a distinct effort to mold the employment relations of the United States into a single form, to the manifest advantage of a particular form of organization. This measure of dealing with the most fundamental rights of employers and employees. Their relations throughout the depression have been marked by a mutuality of good will, sympathetic understanding, sacrifice, which have been its marked charactertistic. That there have been exceptions, which all industry desires to see corrected, only emphasizes the rule. But the essential facts and principles of American employment relations rest upon rights of liberty and agreements that cannot be ignored. They have developed upon the theory that every man is entitled to bargain, individually or collectively, for employment on conditions mutually satisfactory to the parties, rather than undertake by disregard of fact and right to force them into one form of relations with trade unions. Many manufacturers deal with such organizations.

Probably three times as many have operated over long periods of time under employee representation plans, including many forms of mutual benefit charactertistic of the most intelligent evolution of the employment relation. To make the pending proposal a means of disrupting long-established relations and require their reorganization into a single form which ignores the most fundamental rights of both parties would engender discord, controversy, and bitterness when it is most important that our employment relations should be characterized by good will, justice, and understanding.

The trade union is a recognized part of our social life, yet at times it frankly sets itself up as a separate and distinct governing agency to control those who believe they can best advance their own interests through other forms of organization and relationship. To deny them the right to continue to do so is violating Lincoln's famous declaration, "No man is good enough to govern a man without the other's consent." It must be, moreover, clear from an examination of the pending bill that the assurance of fair employment relations does not require the provisions of Section 7, for Section 3 provides that the President may condition and code submitted to him to assure the protection of the employees. He may, moreover, modify or suspend the operation of such code. If it does not provide that protection, he may further assure it through regulation, and again, where such satisfactory agreement as to working conditions exists in any plant or industry, he not only possesses full power of investigation but he may specifically prescribe hours, wages, and working conditions as he finds it necessary to effectuate the objectives of this bill.

Moreover, this committee must perceive that as the bill is drafted it is within the discretion of the administrator to exclude from any code, provisions required to be incorporated with respect to employment relations, and thus to transform the whole measure into a Federal control of employment relations in every local field, to the exclusion of every other feature.

Finally, if this committee is of the opinion that a statement of employment relations is essential to condition codes and agreements, we submit that, as fair-minded men, it shoud be stated in terms which not only fairly recognize the equal and mutual rights of both employer and employee. Of those who desire to refrain from any particular form of as ociation, as well as those who desire to associate. To recognize no narrow and exclusive relationship, but, as it constitutionally required, every form of legitimate employment relations mutually satisfactory to the parties.

As the right to associate is the right not to associate. The one is as essential as the other. Anti-religious wars have been fought upon that principle.

Furthermore, if it is determined to establish controls over employers, it must be obvious that, to the same extent, it is essential to the execution of the measure that similar controls be established over employees. If freedom is contracted as to the one, it must be correspondingly contracted to the other, or either, by violating the terms of regulation, make impossible the performance of the obligations created for the other. Both must enjoy liberty of action or each must be subjected to reciprocal restraints.

Above all, nothing could more certainly jeopardize the success of the experiment than to create the impression that the measure contemplated disruption of satisfactory existing relations and stimulated continuing agitation for the reorganization of employment relations. Nothing could be more certainly calculated to bring uncertainty into the whole field of industrial production. It is not a function of the Federal Government.

I submit to the committee, first, that the President possesses under the bill the power to condition any code or agreement that may be offered for his approval, or that of his representative, to adequately protect all of the rights of employees, because he may add any condition to them, prescribe any condition that is necessary for their protection. That is written into the third section of the bill, so that when you come down to the seventh section of the bill, as I say, you have supplied three essential conditions which must be in every agreement, and they are the only three essential conditions in the bill.

SENATOR GORE: Do they all relate to labor?

MR. EMERY: Yes, Sir.

SENATOR REED: Will you permit an interruption at that point? I realize that those who come in late may by our question compel you to go over the same ground twice. As I read Section 3 of this bill, in its requirement for codes of fair competition, it does not at all exclude and impliedly includes the selling price of the products of the group who make the agreement, the territory within which each may sell, the amount of business that each may do, and it is conceivable that a group might make such disposition of business as to effect prices in that way, and with the approval of the President it becomes a code of law for that industry, the violation of which is a crime. Is that correct?

MR. EMERY: What can be put into that code, Senator, is highly indefinite.

* * * * * * * * * * *

SENATOR WAGNER: And you know as a matter of fact when it comes to a question of unfair competition, that is one of the objects behind the bill, that the competition today is the cause of the low wages which are being paid at the present time and the long hours of labor. Those are the two elements which have brought about this unfair competition, the sweat shop methods, which have dragged down the whole economic structure, and it is that sort of thing we are addressing ourselves to, and it is not fair to stop something that may be done. We are preserving competition, or, rather are we putting it on a basis of efficiency rather than exploitation.

MR. EMERY: I wish that were stated in the bill.

SENATOR WAGNER: You cannot put every word into the bill. Everybody knows it except those who are now attempting to conjure these imaginary arguments in order to defeat it.

MR. EMERY: We are not conjuring up any imaginary arguments.

SENATOR WAGNER: We have had conferences, Mr. Emery, with you, and I think it was pretty definitely stated what the purposes were behind the bill, and that the thing was to lift up and to prevent this unfair competition and this exploitation of labor, and that will put competition on a fair, decent basis, for the smaller as well as the large, and my

own view is that this is going to help the small business man as against the large business man. It is going to give the small business man a chance, because the hours of labor and wages have got to be practically the same in the same community.

SENATOR REED: If I may resume again, I would like to complete my thought. We have been sitting here for several days listening to representatives of the oil industry urge this sort of thing for their industry, appointment of a dictator to have the power to fix prices and regulate competition, and they are frank enough to tell us that their motive is to raise the price of oil from its present low level to manufacturers of Pennsylvania and elsewhere who favor this bill about a dollar a barrel. I have been approached by a good many because in their minds it is an indirect way of repealing the present ant-trust laws, and I want to know how that strikes you.

MR. EMERY: I want to be perfectly frank about it, as to what we assumed was going to be the effect of this measure. We assumed that one of the causes of the present depression was the deadly downward spiral of prices and wages, which has completely demoralized the normal exchange of goods and services among our population. In other words, as men on the ladder, they fought with all the means they had, they cut prices along until conditions became such that they were unable to pay labor, and the result was a deadly downward fall in price levels. The effect is that you can do two things. You can compel competition to the death, on the one hand, and have regulation of competition under appropriate conditions. We believe men can be forced to form organizations in industry; that you can cause an effective measure of competition that will prevent the most destructive element that hits our consuming power and that is low wages.

SENATOR REED: I never heard of a pool in any industry that did not put up as a pretext the claim that they wanted to keep prices high enough to pay good wages.

SENATOR WAGNER: You never had Government supervision. That is where public protection comes in.

MR. EMERY: I am sure you will agree with me that one of the most disastrous features of this depression has been that steady deadly competition that demoralized business, and every industry was overburdened with debt, and could not get the money to sustain them until we were all brought down to that level. So far as the people I represent are concerned -- and we say it with as much interest in those to be protected as others -- that the manufacturer who sells below cost is as much a liability or more so than as asset.

SENATOR REED: And if you establish a system of this kind, or like that in Germany, your cure is worse that your disease.

MR. EMERY: The cure here is that you are after a reasonable amount of regulated competition between parties, but they must depend upon the administration of the bill. One thing certain about the bill is that the administration must, if it is retained in the form it is now in, regulate working conditions and employment conditions and wages as now prescribed in the bill. These are things he must do, and whether he

does anything else depends on him.

SENATOR WAGNER: And that is your opposition to this bill, is is not? Do you not think labor is receiving too great protection here?

MR. EMERY: On the contrary, I want it to receive every reasonable protection, but I want that expressed in terms that are fair to employer and employee and not a one-sided bargain here that attempts to drive our employment relations into one form.

SENATOR WAGNER: You say you wanted a mutuality there?

MR. EMERY: Yes, Sir.

SENATOR WAGNER: All we are saying is that if the laborers so choose, they may bargain collectively. That is a right the court has said they have and they have upheld contracts for collective bargaining, and the only thing we say is if they care to assert it, they have that right to collective bargaining, and if they do not they can deal otherwise with their employers.

MR. EMERY: They do not need any expression here. I want to suggest this as an amendment that would express that in fairness. I recommend it to the Senator, and he is a very fair man.

SENATOR WAGNER: You did not mind my interrupting you, did you?

MR. EMERY: Not all, Senator. You never interrupt me without profit.

We suggest that Section 7 is not essential in order to afford the protection which you desire, because you could amend Section 3, which is the section which controls codes and agreements; and if you did amend Section 3 and strike out Section 7 and add the following, you would adequately protect labor and the employer in fair terms that would recognize the rights of each, and it would read as follows:

Addition to Section 3:

(e) In every code of fair competition in any trade or industry or subdivision thereof approved by the President under either subsection (a) or subsection (d) of this section the provisions for the protection of employees shall include the following conditions:

(1) That employers and employees shall have the right to organize and bargain collectively in any form mutually satisfactory to them through representatives of their own choosing.

(2) That no employee and no one seeking employment shall be required as a condition of employment to join or refrain from joining any legitimate organization, nor shall any persons be precluded from bargaining individually for employment.

You cannot take away from the people of the United States the right

to bargain individually, if they so choose. We have great groups that operate collectively. They are entitled to it. But you cannot take from the mass of the people of the United States by Federal act the right to bargain individually if they so choose, because today the greater pools of employees are comparatively among the small employers. I think the employment today is 65 percent in manufacturing establishments that employ less than 100 people.

SENATOR WAGNER: Is there anything in this bill which takes away from an individual the right to bargain with his employer?

MR. EMERY: Yes.

SENATOR WAGNER: How?

MR. EMERY: You do it by inference and by implication.

SENATOR WAGNER: I do not see where.

MR. EMERY: I will read it to you. I am afraid, Senator, you have not read your own bill. It is in Section 7.

SENATOR WAGNER: I am afraid you have not.

MR. EMERY: I have read so many of them I don't know which one you have had last. I read one. Afterwards it was changed, and after you had it, it was taken over the House and modified again, so that it was aimed very specifically at what might be called the "employee's representation plan", where companies who are dealing with their own employees on a system of employee representation or wage plan and so on, that were satisfactory to them, where they were mutually satisfied, they should have the same protection as otherwise.

SENATOR WAGNER: You cannot say to this man, "You cannot work people unless you employ this man."

MR. EMERY: No, Sir. What is the opposite?

SENATOR WAGNER: What is it?

MR. EMERY: You will have to join the labor union in order to work here.

SENATOR WAGNER: Where is there anything here that compels him to join a labor organization?

MR. EMERY: You are careful to assert his right to belong to it, but not the contrary.

SENATOR WAGNER: Do you not think he can join a labor union if he wishes? The only thing is it is carrying out the policy which Congress has declared and put on the statute books. The only thing is that this says you must be fair. That is the yellow dog contract provision you know so much about. The other one is that it provides that if the laborers desire to bargain collectively you may give them the right to bargain

collectively. That is all it does.

SENATOR GORE: Is this your point, that there are certain rights of labor guaranteed in this bill and not entrusted to the discretion and power of the administrator, while on the other hand there are certain fundamental rights of the employers, not expressly guaranteed, but are committed to the discretion and power of the administrator?

MR. EMERY: Exactly.

SENATOR REED: Have you prepared an amendment to carry this out?

MR. EMERY: Yes, Sir. That is, only with respect to that subject, I raised other questions here before you came in. Unfortunately I did not have the benefit of your presence to call attention to.

I have only one other matter. I just want in that connection, if I may, to call your attention to this, because all we are saying is that this should be a fair equation and fair to both parties, and for all things, do not write anything into this act that operates to create a discord and break any long established relations mutually satisfactory to both sides. If it stimulates that kind of agitation, then any gain in the objectives at which this is aimed is frustrated at the start.

SENATOR GORE: In speaking of equation, would that in your judgment involve licensing labor organizations as well as employers?

MR. EMERY: I said, if you are going to employ coercion to compel the employer to abide by a policy set up by the administrator, you have to have similar control over employees. If you say to the employer, "You must observe the wages and hours set up here," what is his protection if he enters, as he must, upon future contracts and agreements, and then he is to be confronted at some stage of his contract with new demands, new requests for longer or shorter hours, or whatever they may be, What protection has he?

SENATOR COPELAND: I thought he was protected by the protection all of you have, to jack up the price some way.

MR. EMERY: It is easy to jack up the price, but it is hard to market the goods at that time.

SENATOR GORE: The contract you have in mind is where a contractor or manufacturer agrees to manufacture an article at a certain price to be delivered six months afterward, fixing the price in the contract. You raise the point if labor should demand an increase in wages, what would be the effect on the manufacturer?

MR. EMERY: These arrangements with regard to both wages and hours are subject not merely to demands on the part of the workers. It may be entirely justified, but they are at all times under control and discretion of the administrator. He himself may change these at any time. He may modify the agreements and he may suspend them, and as I pointed out a while ago, as long as that license clause remains in there, he has the power of death over it. He can confiscate his property and drive him into exile if he does not obey his orders. No dictator in the world has the

power that lies in that license clause.

SENATOR WAGNER: Have you strengthened the bill with your provision?

MR. EMERY: It would greatly improve it. Would you support it if we put those in?

SENATOR WAGNER: It is equally difficult to answer either way.

MR. EMERY: I just want to call your attention in regard to that to the fair way, because it is often referred to. Take our British brethren over there. He is the way they make provision in their fundamental law. This is from the Trade Union Acts of 1927, which is the controlling statute in relation to trade unions in Great Britain.

SENATOR GORE: How long is that act?

MR. EMERY: It occupies about 7 printed pages.

SENATOR GORE: Will you put that in the record?

MR. EMERY: I shall be very glad to do so. I do not have it with me, but I have it at the office. I would like to read these two sections. Section 6:

> (1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any conditions upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.
>
> (2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration of acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union.

They go very far in that act. You see that trade unions are recognized. You will see that all organizations, both employers' and employees', have only the beneficient side but they protect the general public in that respect.

SENATOR GORE: That was passed after the general strike?

MR. EMERY: Yes, sir; and it lived through the labor administration that held office for 2 years, without the slightest modification.

APPENDIX II - E

STATEMENT OF E. L. MICHAEL, REPRESENTING VIRGINIA MANUFACTURERS ASSOCIATION (*)

* * * * * * * * * * * * *

MR. MICHAEL: Again, I repeat, that confidence is the essential factor for reviving the wheels of industry -- confidence that employment relations existent at the time this act takes effect, mutually and satisfactorily established by and between employers and employees, will not be unduly disturbed except by mutual agreement -- confidence that such relations will not be destroyed by agitation and influence assumedly required by Federal or State provision and authority. No management of industry will willingly be deprived of its right to advise freely with its employees as to the minimum wage and the maximum hours and all other conditions of work and production, which the business will afford or permit, especially with a provision where it may be hailed into a district court because of an alleged violation of "interference, restraint, or coercion" as such conferences would undoubtly be interpreted or charged by some representative of a labor organization.

It is common knowledge that in the Federal and State Labor Departments the words "collective bargaining" have been universally interpreted to mean collective bargaining by and through the organizers or representatives of labor unions, whereas we know collective bargaining is practiced every day between employees and employers in thousands of individual establishments.

Suppose, as provided in Section 2, the President should designate the United States Department of Labor, and with the consent of the State labor department, to administer all labor provisions of the proposed act? Based upon past observations and experience, there would immediately be established the influence of the Federal and State Governments toward the compulsion of unionization of the vast majority of employees in industry, who are not at present unionized, and it would be difficult in many cases for them to continue their expressed and demonstrated preferences and actual existing practices of making mutually satisfactory agreements with employers. Such a condition would instantly cause apprehension and confusion, instead of the confidence so necessary for improvement of present conditions.

(*) 73rd Congress, 1st Session, National Industrial Recovery. Hearings on S. 1712 and H. R. 5755, before the Senate Finance Committee, May 31, 1933, pp. 379-381.

It is true that employees now possess and have always had the right to organize and bargain collectively, and the inclusion of such provision in the act confers no new privilege, except by inference and the interpretation as reputed to have been expressed before the House committee by officials of labor and similarly expressed in a recent speech in New York. Such interpretation is, of course, contrary to the provisions of subsection (b) of this section, where employment conditions may be established by mutual agreements between employers and employees. But the balance of this clause (1) as now written virtually says that the employer shall not be permitted to take any action to protect or defend his organization and business from any ill-advised attempts to break down existing agreements and morale which has proven most successful in operation to the large majority of American employees and employers alike. Employers are not seeking controversies occasioned by such interpretations, and they want to contribute all their thought and effort and means to the successful operation of this act. But in the interpretation of this section, as above reputed to labor officials, it is contemplated by them that all employees in industry must organize into labor unions, whose representatives propose to negotiate and conclude with representatives of given trade industries, agreements as to hours, wages and working conditions for that industry, which plan, in our judgement, is impossible of successful consummation. If such a plan were physically possible or successful, we would certainly observe more than 7 to 10 percent of employees in gainful occupations belonging to labor organizations today.

Appointed by the late President Wilson as a member of the National War Labor Board, during the great war, I had opportunity to observe for 13 months the operation of just such a license as is provided in this clause (1), and while endeavoring to render a service to my country at Washington, organizers were sent, and prepared and submitted on behalf of some easily influenced employees, to that Board, a complaint of alleged grievances against me and my company. Needless to say, the complaint was dismissed, as the complaints were not substantiated. Furthermore, our plants have never been closed one day in the past 35 years on account of labor controversy. Employers have no fear of the ultimate effects of these interpretations, but they wish to avoid the loss of time to themselves and their employees in controversies or litigation, where they have now established the machinery whereby the representatives of employees at frequent intervals meet with the representatives of management and discuss and settle all questions with respect to hours, wages, and working conditions.

During the past 3 years of depression no one can successfully challenge or criticise the sympathetic interest and substantial sacrifices that the majority of employers have manifested in the sustenance of their employees and their families in industry, whether they have heretofore operated as closed union shops, or as open shops, where union and non-union men have labored together. We hold no defense or tolerance for those employers who have sought to exploit their employees in any manner whatsoever. They should and will receive their just condemnation. Fortunately, they constitute a very small minority of American employers.

9860

But these statements and appeals are made for the purpose of maintaining those cordial and mutual relations which should and do obtain today in the majority of American industry where employers, in addition to payment of highest prevailing wages, have voluntarily provided pension systems to which employees have not contributed, where they have established group insurance for the sole benefit of employees and their families, where they have provided accident and health relief provisions in addition to those provided by compensation laws, and all of which provisions have proved great blessings to millions in this period of distress and unemployment. As before stated, employers do not seek or desire any advantage or disadvantage over their employees in carrying on under this proposed legislation, but they ask fair terms under which they are expected and required to establish maximum hours of work and minimum wages and wholeheartedly seek to rehabilitate industry and spread employment and relieve distress.

If, as above indicated, it is proposed to provide Federal and State regulation by and through labor organizations, of all employment conditions, with prohibition of employers' consideration, expression or action, against what he knows to be impossible or oppressive conditions, then the purposes sought to be accomplished will be defeated.

In view of these actual conditions and practices, we ask either the elimination of this section or its modification, so that employees and employers are given equal rights in their future conduct. In clause (3) of this subsection, provision should be made whereby employees as well as employers shall comply with the conditions therein contemplated.

As stated at the outset, employers will patriotically and earnestly support the workable and possibly successful objects of this legislation, and these remarks and appeals are offered solely in the interest of harmony and progress for your most earnest consideration for whatever they may be worth.

APPENDIX II - F

STATEMENT OF CHARLES R. HOOK, PRESIDENT, AMERICAN ROLLING MILL CO.(*)

MR. HOOK: Mr. Chairman, I do not appear to represent any group except the corporation of which I happen to be president. However, from numerous conferences which I have had with large numbers of executives of the steel industry, and with manufacturers in other lines of industry I am quite confident that I represent the viewpoint which is very general in industry today.

We have some 7,000 men on our pay roll. Therefore I think I represent a fair number of employees. The weight that you give to whatever I might say will be determined by your opinion as to whether or not I am qualified and competent to speak with respect to the matters which I am going to call to your attention, so in passing I simply want to say to you that I have gone through the ranks of the employee class, if you may term it that. In other words, I started 35 years ago as an office boy in the steel industry, and have gone through the various positions in the operating division first, and then in general charge of the affairs of the company. As a worker I spent a year and a half working Sundays and many nights without compensation in order to become proficient in a skilled job, known as a "roll turner", so that at one time I was in the ranks of the skilled worker. Therefore, it seems with this background I can properly come before you and present the viewpoint which I wish to present.

Realizing that your time is limited, and that you have requested witnesses to be brief, I will make this just as brief as possible, and instead of reading this very short statement at the end of what I have to say, I will read it now and then explain several of the statements which I have made and retire.

The corporation which I represent and, I think I may add, the vast majority of all industrial corporations in the United States, are in hearty sympathy with the objects of the proposed legislation. Judging from the expressions of the chief executives of steel companies representing not less than 95 per cent of the production of the country, I can confidently state that this industry is anxious and willing to do everything in its power to cooperate with the President in his efforts to increase employment through the encouragement of business volume and the fair distribution of available work.

(*) 73rd Congress, 1st Session, National Industrial Recovery, Hearings on S. 1712 and H.R. 5755 before the Senate Finance Committee, June 1, 1933, pp. 388-389.

He would be a poor citizen indeed who did not bring to your attention provisions or lack of provisions in the act which would militate against a successful accomplishment of the desired objectives.

I think we must all agree that never was there a legislative proposal of such magniture, so all embracing, and with the delegation of such tremendous power and authority as is contemplated in the bill under consideration. Therefore, it should have the most careful, calm, and thorough consideration before the wording of the bill is given final approval.

In our opinion there was never greater need for the most careful consideration of the form of organization and personnel of the administrative body. The success or failure of this most commendable experiment will depend as much upon able and fair administration as upon the sound, coordinated, and cooperative effort of industry itself.

This statement is meant to imply no lack of confidence or faith in the fairness or ability of the President, but the character of support which he receives will determine whether his shoulders will support the burden which has been placed thereon.

There are two things which I wish particularly to bring to your attention for your careful consideration:

First. The happy relationship which has existed between employer and employee in this country during the past 10 years, and particularly during this period of great personal and corporate suffering should not be endangered by any wording in the bill which would permit of misinterpretation or imply a privilege on the part of the employer or on the part of those not employees of a corporation which it is intended they should not have. I am quite sure that it is the desire of Congress as well as the President to recognize the right of employees to bargain individually or collectively and to belong to or not to belong to labor organizations as they choose, and that where collective relations exist or are established, they should be in any form which is mutually agreeable to the parties, and in which their respective representatives are designated without interference by either party or by those not connected by employment with the industrial corporation in whose plants the questions of hours of labor, rates of pay, and other working conditions are under consideration.

I offer for your consideration under section 7:

(a) The following in substitution for the present wording in the bill:

1. That employers and employees shall have the right to bargain collectively in any form mutually satisfactory to them, through representatives of their own choosing.

2. That no employee and no one seeking employment shall be required as a condition of employment to join or to refrain from joining a legitimate labor organization.

Second. The prime objective of the act is to increase employment in the industrial plants of the United States and thereby cause a normal exchange of goods and services amongst the citizens of this country. In our opinion the much hoped for results to be secured from the enactment of the legislation will not be accomplished unless the President is given authority to make such regulations as are necessary to protect American made goods and American workman against the influx of foreign-made goods produced under labor conditions and with wage rates and other conditions not comparable with American standards.

With reference to title 2, it is our opinion that the most equitable method of taxation is to spread a 1-point manufacturers sales tax over our industries.

THE CHAIRMAN. Thank you very much.

APPENDIX II - G

STATEMENT OF HON. R. P. LAMONT, REPRESENTING THE AMERICAN IRON AND STEEL INSTITUTE. (*)

MR. LAMONT: I am appearing for the American Iron & Steel Institute, representing about 95 percent of the steel industry of the country.

Because of a lack of clearness and definiteness in the so-called labor clauses of the National Industrial Recovery Act, and doubt as to the meaning and intent of some of the changes made in the bill since it was intriduced in the House, and in view of the recently widely published interpretation of a statement concerning these sections, and fearing that silence now might be later misinterpreted, the iron and steel industry has thought it necessary to clearly state its position with reference to these sections.

It makes this statement without any antagonistic feeling of prejudice.

The industry stands positively for open shop; it is unalterably opposed to the closed shop. For many years it has been and now is prepared to deal directly with its employees collectively on all matters relating to their employment. It is opposed to conducting negotiations regarding such matters otherwise than with its own employees; it is unwilling to conduct them with outside organizations of labor or with individuals not its employees. The industry accordingly most strongly objects to the inclusion in the pending bill of any provisions which will be in conflict with this position of the industry, or of any language which implies that such is the intent of the legislation. If this position is not protected in the bill, the industry is positive in the belief that the intent and purpose of the bill cannot be accomplished.

SENATOR REED: Do you think that the provision in the bill requiring consultation with representatives of the employees does in fact abolish the open shop?

MR. LAMONT: I don't quite get that.

SENATOR REED: I get your point all right, that you do not want anything done in this bill that will do away with your open-shop policy. Do you think the bill as it stands does that?

(*) 73rd Congress, 1st Session, National Industrial Recovery, Hearings on S. 1712 and H. R. 5755, before the Senate Finance Committee, June 1, 1933, pp. 394-395.

MR. LAMONT: There is some question about it. It is uncertain. It is not quite clear just what the recent ammendments do contemplate.

THE CHAIRMAN: You are talking about the House amendments?

MR. LAMONT: The House amendments.

SENATOR REED: It gives the employees a right to be consulted through representatives of his own choosing. Isn't that perfectly consistent with your open-shop policy?

MR. LAMONT: Yes. That statement by itself is; yes. May I just read the section to which I refer?

"The announcement also disclosed that the Federation will use the industry recovery bill as occasion for an organizing campaign. Mr. Green will outline a plan to the meeting for a quick and intensive drive throughout the country, so that workers might be better prepared, as it was expressed, to demand consideration in the industrial agreements contemplated.

The attitudes taken today by the two organizations were in marked contrast to the statements made by Mr. Green and Henry I. Harriman, President of the Chamber of Commerce of the United States, when they joined hands before the Ways and Means Committee 10 days ago in support of the legislation."

The fear is that that would be more disturbing to industry than helpful.

APPENDIX II-H

STATEMENT OF JOHN L. LEWIS, REPRESENTING THE UNITED MINE WORKERS OF AMERICA AND THE AMERICAN FEDERATION OF LABOR. (*).

MR. LEWIS: Mr. Chairman and gentlemen of the committee, I appear here to sum up briefly the position of organized labor in America with regard to this industrial recovery bill. We stand squarely behind Section 7 as reported to the Senate in the House bill, as amended by the Ways and Means Committee. It will place upon the statute books a good safe declaration in the form of statute that will give to the workers of this country some rights, the same rights now enjoyed by the employers and the corporations, the right to organize, and to bargain collectively for their labor, and to be represented by representatives of their own choosing, in precisely the same form, gentlemen, that the American Iron and Steel Institute is represented before this committee this morning by a former distinguished Secretary of Commerce, Mr. Lamont, a representative of their own choosing.

This measure came from the House of Representatives largely as an agreed measure on the part of labor and industry in this country, industry speaking through the United States Chamber of Commerce, the National Association of Manufacturers and their various subdivisions, and labor speaking through the American Federation of Labor.

Mr. Harriman, President of the United States Chamber of Commerce, appeared before the Ways and Means Committee of the House and unqualifiedly endorsed every provision of Section 7 in this measure.

THE CHAIRMAN: As now in the bill?

MR. LEWIS: As now in the bill.

SENATOR GEORGE: In the House bill?

MR. LEWIS: Because he was there, following Mr. Green on the stand, when the so-called "company union amendment" was recommended by Mr. Green and later adopted by the Ways and Means Committee.

SENATOR GEORGE: You mean as in the House bill?

MR. LEWIS: As in the House bill. Now according to press reports, Mr. Harriman has addressed a communication to this committee in which he expresses the fear that Section 7 will violate the true principle of the open shop, an afterthought, doubtless brought to his attention by some of those irreconcilable units of industry who, with their last breath, will oppose any recognition of labor by the extension of any privilege to labor.

Mr. Lamont appeared this morning for the iron and steel industry, and stated that the Iron and Steel Institute, which represents 90 to 95 percent of the producing units of the steel industry, likewise stands for the open shop. That carries the implication that the open shop is an institution or a policy whereby the employees of the steel

(*) 73rd Congress, 1st Session, National Industrial Recovery, Hearings, on S. 1712 and H. R. 5755 before the Senate Finance Committee, June 1, 1933, pp. 404-407

industry can at will belong to a union or not belong to a union, as they choose, and that the employers are protecting the principle of the open shop and the right of employees to either belong to a union or not belong to a union.

There is no open shop in the steel industry as represented by Mr. Lamont. There is no right to belong to a union in the steel industry. It is a misnomer. If any shop exists in the steel industry, it is the closed shop, closed to the man who wants to belong to a union. He cannot work in the steel industry if he belongs to a union, and the best evidence of that fact is that in the steel plants of the United States Steel Corporation today there are no union men. There is no man who dares say he belongs to a union. Why? Because the secret-service bureau and the intelligence department of the Carnegie Steel Co., the American Sheet & Tinplate Co., the National Tube Co., the American Bridge Co., all of the units of the Steel Corporation, report that man and he is immediately discharged, if he attends a union meeting, or if he gives voice to a sentiment that indicates his desire to belong to a union.

That is the kind of open shop that exists in the steel industry which Mr. Lamont comes here his morning and pleads with this committee to maintain in the future.

SENATOR REED: Is that similarly true of the mines?

MR. LEWIS: It is true of the National Mining Co., the United States Coal & Coke Co., the Fricke Coal & Coke Co., the Tennessee Coal & Iron Mines. It is not true of the United States Steel Co., in Illinois and Indiana, where they deal with the union. And, Senator, in that instance the Steel Corporation deals fairly with its employees, where they do recognize the unions in those mines.

SENATOR REED: How about the iron mines? Are they organized?

MR. LEWIS: They are not, Senator, and a man cannot belong to a union in the iron mines for the reason that the secret-service department would report him, and he is immediately weeded out.

There is no open shop in the steel industry. It cannot be perpetuated because it does not exist, and it is beside the question now for the iron and steel industry, which last week, through a speech to the Iron Institute in New York, told the American people the iron and steel industry was assisting in good faith the industrial recovery act, to now send its representatives here to scuttle the legislative ship through the opening of the sea cocks in Schedule No. 7.

Organized labor in America wants the right to organize if it wants to organize. Every employer has the right to join these trade associations, and the enactment of this bill will make it almost mandatory upon every substantial employer of labor and producer of commodities transported in interstate commerce to join an organization for his protection, and through this legislative enactment there will be a closed shop to employers and industrialists in this country in every trade and industry, and yet distinguished gentlemen have the effrontery to come before this

committee and propose that, after securing these privileges for themselves, they will deny to the workmen engaged in those industries the same rights and privileges which they arrogate to themselves.

Labor in America is tired of such hypocrisy; it is tired of being dealt with in such a manner by men who proclaim the present labor relationship, as was done this morning by a representative of the steel industry here, as a happy state of affairs existing and a happy condition. A man who can say that labor relations in the last 10 years in America were happy is an optimist that dwells in a realm to which I cannot ascend. I refer him to the millions of workmen who have their standards of living degraded and their conditions of employment taken away from them, their hours of labor unduly lengthened by the arbitrary actions of employers, who merely posted their wage schedules upon the bulletin boards and told them to take it or leave it. They had no voice in determining those conditions. They had no privilege to even express their opinion as to whether the policy was good, bad, or indifferent.

I have here the figures of a coal company in Harlan County, W. Va., that withdrew from the recently formed Appalachian Coal Sales organization that was formed to raise the price of coal in that area, because they found it was more profitable to undersell the pool price, by reducing the price of their labor and lengthening their hours, and this statement shows they are running their mines now an average of from 12 to 16 hours a day, and the average per day worked underground for those men is 13 hours, and the average compensation received is $2.25 daily.

They are making it impossible for the sales crew to function and they are making it impossible for their labor to live and endure, because no man can work underground 13 hours a day and continue to maintain his health.

This legislation, gentlemen, is intended, in the words of the President, to correct the attitude of that coal operator and that employer, who is the man that is dragging down industry -- correct his attitude so that the producers in that field may be protected against his discriminatory sales policy and influence him so that he will give his labor a reasonable day's work at a living wage. That is the purpose and the intent of this measure, and it cannot be accomplished in American industry by emasculating Section 7 upon the petition of men who come here to maintain a medieval relationship in labor.

American labor occupies a unique position in this country, because in the very essence of things it must stand between the rapacity of the robber barons of industry of America, and the lustful rage of the Communists, who would lay waste to our traditions and our institutions with fire and sword. And the one is almost as great a menace as the other.

Labor in America, organized labor, is trying to maintain an equilibrium of relations in industry, and trying to maintain an equilibrium of our Government in this time of stress, and in order to accomplish that task it is entitled to the friendly cooperation and support of every American who believes in maintaining that equilibrium so that our Nation

might endure, and it cannot be maintained by following the legislative course of action suggested here by large employers of labor in the iron and steel industry, and National Association of Manufacturers, to keep from labor those rights which the masters of industry arrogate to themselves.

The only parallel to this situation, and this suggestion made here, that now comes to my mind, is the action of the Scotch Parliament in 1654, which enacted a statute which said that the relations between the employee and the employer were those of master and servant, and that no servant would be permitted in the mining industry to leave the employment of his master without the master's consent.

And again, they passed an act giving to the Scotch mine owners the authority and power to go out upon the byways and public highways and apprehend all rascals and stout varlets and impress them into service.

Perhaps that is the kind of amendment to this bill that the steel industry would like to have, the power to apprehend men and impress them into service of industry and keep them there under the conditions they impose upon them. That is not a far cry. It does not require any great stretch of the imagination.

Gentlemen of the committee, I must not take more time. I appreciate your haste. I merely want to say in conclusion that organized labor in America, speaking through the American Federation of Labor and its subdivisions, has endorsed the provisions of this legislation. They have endorsed it because they think there is an emergency in the Nation that is hourly growing worse. There is a grave necessity for the stabilization of our economic and industrial processes. There is an imperative necessity for setting up machinery under the Government for economic, cooerination, and regulation of processes of industry and labor relationship. Let there be no "moaning at the bar" when we put out to sea on this great adventure; let there be decision on the part of all, and each will be treated according to his inherent rights, and every American engaged in industry, whether he is a member of the American Iron & Steel Institute, the President of the National Manufacturers Association, or the humblest employee in your Edgar Thompson Works, Senator, he shall be accorded by this great Government of ours the equal opportunity to do those things that are inherent under the great privileges of American citizenship.

Labor will protest any emasculation of Section 7, and it says furthermore that industry has nothing to fear in a modern rationalized labor relationship such as can be set up and administered under the provisions of this act.

Those employers who point with fear, apprehension, and alarm to the amendment, referring to company unions in Section 7, need not be alarmed. There is nothing in Section 7 that will destroy the company union as it now exists in any plant. If the employees of that plant want to remain members of a company union, all there is in that is that the Bethlehem Steel Co. cannot, as a condition of employment, force those employees to join a company union, or discharge them or penalize them if they refuse

to do so. That is all there is in the company union proposition, which was inserted in the bill by action of the Ways and Means Committee of the House.

Gentlemen, I thank you for your consideration and hope you will give these matters serious consideration, because these remarks come, as you must understand, from the ideals, objectives, and dreams of labor, and right from the heart of American Labor.

APPENDIX III

SENATE DEBATE ON "EXISTING SATISFACTORY RELATIONSHIPS" (AMENDMENT TO SECTION 7 (A) PROPOSED BY FINANCE COMMITTEE). (*)

THE VICE PRESIDENT: The Clerk will state the committe amendment.

THE CHIEF CLERK: On page 10, line 13, it is proposed to insert the following proviso:

PROVIDED, That nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm, or corporation, except that the employees of any particular plant, firm, or corporation shall have the right to organize for the purpose of collective bargaining with their employer as to wages, hours of labor, and other conditions of employment.

MR. NORRIS: Mr. President, in the first place, I want to thank the Senator from Mississippi for agreeing to a reconsideration of the vote whereby this amendment was adopted in my absence, although I have been trying to watch it as best I could during the entire day. I think Senators realize, most of us -- all of us, I presume -- especially when we commence the session of the Senate at 10 o'clock and continue until late in the evening, the necessity, unless one is very discourteous, of being called from the floor many times. During my temporary absence this committee amendment was, I think, agreed to as a matter of form only, there being no debate on it. I regard this amendment as a very important one, and I hope I may have the attention of the Senate in the brief time I shall occupy in discussing it. I think I shall ask that a roll call be had on this amendment. If I can be assured of that, I think it will probably shorten the debate considerably.

MR. HARRISON: May I say to the Senator if that is his desire I shall be glad to cooperate in getting a roll call and having an expression of the Senate on this proposition?

MR. NORRIS: I thank the Senator.

Mr. President, I am interested in this subject, because for several years the Judiciary Committee, at the time I had the honor of being chairman, had under consideration the so-called "anti-injunction bill" dealing with the labor problem. The committee held extended hearings on that bill. From those hearings and the long consideration given the measure we found that one of the greatest evils we had to provide against was the so-called "company union." This amendment, as I understand and interpret it, legalizes such company unions.

Every man who has studied the question of injunctions in labor disputes and the labor subject generally will, I think, agree with me that it is one of the great evils that must be met in the settlement of the labor problem. We thought we had met it in the bill which

---

(*) Congressional Record, Volume 77, June 8, 1933, pp. 5279-5284.

finally resulted from our long consideration and is now on the statute books, and that in labor disputes we had made it impossible for a corporation wanting to beat down heavily upon labor, and in effect, under the guise of a union, to make it impossible, as a practical matter, for labor to be represented by organization of its own choice, to accomplish such a purpose.

This particular provision in the bill, Section 7, reestablishes, almost in the identical language of that bill, the right of employees to organize in unions of their own without any coercion of any kind from any source. However, it adds a proviso which I think comes very near to destroying, if it does not entirely destroy the effect of the language which precedes it. This is the proviso that I am seeking now to strike out. I have no fault to find with the language which precedes it, but the proviso, after giving labor the right of self-organization, the right to be represented in disputes by an organization of its own choice, then imports this language into the bill:

PROVIDED, That nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm, or corporation, except that the employees of any particular plant, firm, or corporation shall have the right to organize for the purpose of collective bargaining with their employer as to wages, hours of labor, and other conditions of employment.

That looks fair on its face, Mr. President. I think if we were trying to accomplish what at first blush it would seem is sought to be accomplished, all we would have to do would be to strike it out, as it is already in the preceding wording.

MR. COSTIGAN: Mr. President -

MR. NORRIS: I yield to the Senator from Colorado.

MR. COSTIGAN: Is there not amibiguity in the expression "existing satisfactory relationship"?

MR. NORRIS: Oh, yes; there are all kinds of opportunities there.

MR. COSTIGAN: Might that language not perhaps be regarded as affirming that all existing relationships are satisfactory?

MR. NORRIS: Mr. President, in many of these cases the conditions which are not satisfactory will appear to be satisfactory on their face. One of the methods that capital has been using for years to destroy labor unions is to organize unions in the individual plants. The employer pays for the union; he furnishes the money; he controls that union as completely as a man controls his own child. The employees know that to go against the orders of that kind of a union, paid for and maintained by the employer, means dismissal; it means that they will lose their job. So if they were asked whether existing conditions were satisfactory they would say "yes", because to say anything else would mean that they would lose their jobs. There are numerous instances, all the way from New York

to California, where this method has been adopted by corporations which wanted to prohibit their employees from joining a union.

Moreover, Mr. President, a union of laboring men, to be effective must not be confined to the workers in one plant, but must take in its scope and under its jurisdiction all plants engaged in the same industry. Experience has demonstrated that that is the only effective way by which the laboring men may organize. I think the proviso is a direct blow at organized labor.

Some honest people, a great many of them, believe that there ought to be no such thing as organized labor. If their view be the correct one, then we ought to strike out this whole section and say nothing about it; but if we are proceeding on the modern theory, which has been approved all the way from the Supreme Court down, at least in expressions of sympathy for the laboring men, then we ought to provide that the laboring men shall be permitted to organize in their own way without any coercion, without any influence from their direct employers, and that they shall be permitted to select representatives of their own choice to represent them in controversies which they must continually meet with organized wealth. I do not think there is a Senator here but who believes that the right thing to do and the necessary thing to do, if we are to protect labor, is to get away from the company union.

Therefore, Mr. President, I hope the Senate will strike this proviso from the bill.

MR. COSTIGAN: Mr. President, sharing the critical apprehension of the able Senator from Nebraska as to the committee amendment, may I say to the Senator from Nebraska that I am further concerned over the fact that certain language in line 7, on page 10, of this section differs from similar language in lines 18 and 19 on the same page? It is provided in line 7:

That employees shall have the right to organize and bargain collectively.

In line 18, following the ambiguous reference to "existing satisfactory relationships", it is provided that the employees "shall have the right to organize for the purpose of collective bargaining." In order that this language may be consistent, the language in lines 18 and 19 should provide that the employees "shall have the right to organize and bargain collectively."

Otherwise it may well be argued in the courts that where it is claimed that the relations of employers and employees are satisfactory, the limit of authority permitted to the employees is to organize for the mere purpose of bargaining collectively without any provision in the statute inviting the fulfillment of that purpose.

MR. CLARK: Mr. President, I should like to say to the Senator from Nebraska that, in my opinion, this proviso does not have any such effect as he is attributing to it. The proviso was adopted by the unanimous vote of the committee. Mr. Richberg, one of the authors of the

bill, well known as one of the leading labor lawyers and a leading representative of labor unions, was present and not only accepted the amendment but said he thought it was very beneficial to the bill. He suggested only the insertion of the word "satisfactory" in line 2 of the proviso.

General Johnson, who has been designated as the administrator of the bill, was present and said that he thought the addition of the proviso would be most beneficial, and that he considered it an exceedingly constructive amendment. The right of the employees to be free from coercion, to be free to organize in the way in which they may see fit for collective bargaining is specifically guaranteed in section 7 prior to the proviso.

The only purpose of the amendment, the only purpose of the insertion of the proviso, was to clarify and state in the bill what was the consensus of opinion of practically every witness who appeared before the committee. It was not contended on the part of anybody that it was the purpose to compel the employees to organize in a particular way against their wishes. On the other hand, it was the purpose of all concerned to guarantee to the employees the right to organize in any way in which they might see fit and to guarantee the right of collective bargaining. That is what is done by Section 7 as it now stands with the proviso contained in the committee amendment. I hope the motion of the Senator from Nebraska will be voted down.

MR. COSTIGAN: Mr. President, may I ask the Senator from Missouri whether he would have any objection to the substitution, in lines 18 and 19 of the words "and bargain collectively" for the purpose of collective bargaining"?

MR. CLARK: I will say to the Senator that, as I recall it, when I offered the amendment it was in the form in which he now suggests it. It was changed at the suggestion of Mr. Richberg.

MR. COSTIGAN: It was not my fortune to be in the committee meeting at the time.

MR. CLARK: So far as I am personally concerned I have no objection.

MR. COSTIGAN: Unless there is objection I offer the amendment which I have just stated. Is that satisfactory to the Senator from Nebraska?

MR. NORRIS: I am sorry, but my attention was distracted at the moment.

MR. COSTIGAN: Is the Senator's motion to strike out the proviso?

MR. NORRIS: It is not a motion to strike, because the question is on the adoption or rejection of the committee amendment. The way to strike it out is to vote "nay."

MR. WHEELER: Why does not the Senator from Colorado wait until after the motion to strike is decided?

MR. CLARK: We do not have strike it out. The question is on the adoption or rejection of the committee amendment.

MR. COSTIGAN: I will withdraw the amendment for the present.

MR. WHEELER: Mr. President, I concur in the statement made by the Senator from Nebraska with reference to the proviso. I am utterly amazed to hear it stated that Donald Richberg, the attorney, has said this amendment would be satisfactory to labor. As a matter of fact, if the amendment is adopted, labor gets nothing under this section of the bill, because, as the Senator from Nebraska has declared, the laboring men who belong to a company union do not dare to say their souls are their own. They would not dare to come before any committee of the Congress of the United States and say to that comittee that conditions were not satisfactory, that labor conditions in their particular industry were not satisfactory.

When we had the coal hearings we found that very situation to exist. It will be found, for instance, in the railroad company unions. Members of those unions do not dare to write in here to protest against conditions unless they request secrecy with reference to it. That is true in every section of the country. I have in my files letters complaining about labor conditions, but saying, "My name must not be used, because if it is used I will lose my job."

MR. WAGNER: Mr. President, will the Senator yield?

THE PRESIDING OFFICER: Does the Senator from Montana yield to the Senator from New York?

MR. WHEELER: I yield.

MR. WAGNER: The words employed are "existing satisfactory relationship." The word "relationship" is an all-embracing word and includes hours of labor, wages, methods of employment and so forth. I fear, and the more I reflect the more the fear grows, that it may be regarded as a nullification of the other provisions of the bill which outlaw the "yellow-dog" contract.

MR. WHEELER: Why, of course!

MR. WAGNER: This may be a legalization of that contract. I am not sure about it, but that is my apprehension.

MR. CLARK: Mr. President, where does the Senator find anything in the proviso that could possibly be construed as a legalization of the "yellow dog" contract? We specifically outlaw it in terms.

MR. WAGNER: The proviso is, "That nothing shall be construed to compel a change in existing satisfactory relationships." If the particular industry is following the policy of employing only those who will agree to join the company union and make that a condition of

employment, it may be that this section will be construed as legalizing such contracts, at least so far as that particular industry is concerned, because that is the existing relationship and it would be interpreted as continuing that existing relationship.

MR. CLARK: In the very next paragraph it is provided specifically that no employee shall be required as a condition of employment to join any company union or refrain from joining, organizing, or assisting in the organization of a labor union.

MR. WAGNER: I understand the other side of the argument, but it does cast doubt upon the provision, because we say "provided nothing in this title shall be construed to compel a change in existing satisfactory relationships." It may lift that situation right out of the bill and say that those relations shall continue.

MR. WHEELER: I do not think there is any question, for instance, if we have a situation where there are long hours of labor, that the bill is intended to cover that situation. If it is going to give the laboring people of the country anything at all, it is for the purpose of shortening hours, giving better wages to employees throughout the country. If that is not the purpose of the bill, if that is not what the bill is intended to accomolish, then the laboring people of the country have been grossly fooled in their support of it.

MR. LA FOLLETTE: Mr. President, will the Senator from Montana yield?

MR. WHEELER: I yield.

MR. LA FOLLETTE: Some little time ago in the debate a statement was made that Mr. Richberg was representing labor organizations in his presence during the sessions of the committee. I wish to correct that statement, because Mr. Richberg made it perfectly plain, after he had been invited by the chairman of the committee to sit in during the time the committee was in session, that he was not acting in any representative capacity for any labor organization and that he had not so acted in his participation in assisting in the drafting of the bill.

MR. CLARK: Mr. President, I would like to say to the Senator from Wisconsin that if I created the empression that Mr. Richberg said he was before the committee representing any labor union, it was entirely inadvertent on my part. What I did say was that Mr. Richberg is one of the leading labor lawyers and one of the leading labor representatives in the United States, and that is unquestionably true. I was simply illustrating the fact that he spoke from the viewpoint of labor.

MR. LONG: Mr. President, who has the floor?

THE PRESIDING OFFICER: The Senator from Montana has the floor.

MR. LONG: Will the Senator from Montana yield to me?

MR. WHEELER: I yield.

MR. LONG: Mr. Richberg is a railroad labor attorney, who has been before the Interstate Commerce Commission very adequately protecting the rights of labor. This is beyond the scope of his employment, if I understand it. I happen to know, and I think some of us know who understand trade unions, that the most iniquitous practice we have had to contend with is the company union. It is an organization they set up themselves. It is an organization that is set up to prevent a union that is not controlled by the company. They have their social functions worked out in connection with it. They give dances in which the employers participate. They go through that kind of thing and make it a matter of impossibility for a labor union to exist other than a company union. If we are going to attempt to safeguard the labor union, let us not put a spider in the soup and make impossible the very thing that we are trying to accomplish.

MR. WHEELER: Mr. President, it is inconceivable to me that Mr. Richberg, being an able lawyer, would for one moment sanction a provision of this kind being written into the bill if he had given it any consideration at all. It would seem that the minute we seek to put these codes into operation for the purpose of getting better conditions for labor, for the purpose of getting better wages and shorter hours or anything of that sort, we then provide that "nothing in this title shall be construed to compel a change in existing satisfactory relations." If that language remains in the bill, labor gets nothing whatsoever out of the bill. Men who are working for a company and who belong to company unions, particularly where conditions are bad, dare not go before any committee, dare not go before any organization or any body and say, "We want shorter hours or we want to do this or that." They will be compelled by their employers to go before committees and say conditions are satisfactory. We have had examples of that before congressional committees where companies would bring their employees before the committee, paying their expenses, and where the employees would say to the committees that conditions were absolutely all right, that they wanted this or that, when we knew as a matter of fact that they were not their own free agents but were merely speaking at that time for the company which they represented because they knew that if they did not do it they would be put out in the streets and their wives and children would have to go without food and perhaps shelter.

Let us not try to fool the workingmen of the country by putting in a provision of this kind. Either we mean to better their conditions or to leave them just as they are today. If we mean to better their conditions, then let us reject this amendment. If we mean to leave them in the condition in which they are today, if we mean to keep them in sweat shops and work them 10 and 12 hours a day, then leave the amendment in the bill. But do not go back and tell your constituents that you voted to leave the provisions in the bill because you thought you were voting for the rights and interests of American labor. Do not go back and base your vote upon the fact that Mr. Johnson or somebody else came before the same committee and said to that committee, "This is entirely satisfactory to organized labor."

As I said a while ago, I am perfectly amazed to hear the Senator from Missouri say that Mr. Richberg made a statement of that kind. It

cannot be possible, it seems to me, that he had read this provision or that he had given it any consideration. It is inconceivable to me that a man who has represented organized labor as long as he has, just because he is going to be taken into the Government service, should completely change his views with reference to the necessity of protecting organized labor. I do not believe that Mr. Richberg would do it; but if he had given this provision careful consideration, and if he had given it careful thought, and then said that it is satisfactory to the organized labor of this country, I should say there was something wrong with Mr. Richberg when he made that statement.

I submit that this section, if we really want to protect labor, should be stricken from the bill.

THE PRISIDING OFFICER: (Mr. Johnson in the chair) The question is on the proviso beginning on line 13, page 10, on which the yeas and nays have been ordered. The clerk will call the roll.

MR. McNARY: I suggest the absence of a quorum.

THE PRESIDING OFFICER: The absence of a quorum is suggested. The clerk will call the roll.

THE PRESIDING OFFICER: Eighty-five Senators have answered to their names. A quorum is present.

MR. HARRISON: Mr. President, a parliamentary inquiry. Those who are in favor of the committee amendment will vote "yea" and those who oppose it will vote "nay"? Is that correct?

THE PRESIDING OFFICER: Yes. The question is on the committee amendment.

MR. HASTINGS: Mr. President, I desire to propound an inquiry to the Senator from New York (Mr. Wagner) or to the Senator from Mississippi (Mr. Harrison). I wish to see whether I understand definitely with respect to this amendment.

If I am correct in my understanding, under this bill the various industries have a right to prescribe a code, which may be approved and must be approved by the administrator; and if a certain industry does not provide any code, the administrator may himself provide one for that particular industry. Each of these codes will have written in it these provisions set out in Section 7, giving to labor the right to organize free from any interference on the part of the employer.

The inquiry I desire to propound is whether, anywhere in this bill, any authority is given to the administrator or to anybody else over the employees of these various industries of the Nation; or is it the purpose of the bill to leave the employees entirely free to do exactly what they please with respect to every industry that has adopted a code under this bill?

MR. HARRISON: It is not my construction that the employees can do

everything they want to do. I may say that the contention of the labor representative before the committee was that if the employers would guarantee to employ labor, they would not object to certain guaranties that were insisted upon on the part of the employers.

MR. HASTINGS: But it is true, is it not, that the administrator has no power whatever over the labor organizations under this bill, and that they are perfectly free to work or not to work, or to do just exactly what they please with respect to bargaining with the employers?

MR. HARRISON: There is nothing in the bill that compels labor to work may I say. The bill does give to labor the right of collective bargaining.

MR. NORRIS: Mr. President, I did not intend to say anything; but certain Senators have just come in, and I fear the question of the Senator from Delaware is just a little misleading.

The matter is a perfectly simple one. Section 7 (a) provides as follows:

Every code of fair competition --

That is what is going to be made, a code, under this agreement --

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions:

It is a limitation upon the power of the man who makes the code. That code must contain these conditions, and then, after that, it sets up what the conditions are:

(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing --

And so forth; and then it adds a proviso that they cannot do it! That is the effect of the proviso.

In other words, there is a proviso that makes the company union legal -- one of the great evils that labor has had to fight against since the beginning of the war between capital and labor -- and the question comes on that proviso. The committee amendment adds the proviso, and we are seeking to prevent the adoption of the committee amendment.

MR. KING: Mr. President --

MR. NORRIS: I yield to the Senator from Utah.

MR. KING: Does the Senator construe that as meaning that if a union exists it is petrified, and may not be changed, and must continue to remain?

MR. NORRIS: This proviso would pretty nearly mean that.

MR. KING: I do not think so.

MR. NORRIS: The proviso says:

PROVIDED, That nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant --

That is a definition of a company union --

firm, or corporation, except that the employees of any particular plant, firm, or corporation shall have the right to organize for the purpose of collective bargaining.

That is what the company does with the company union. It is organized by the company; the expenses are paid by the company; it controls the union just as completely as a master controls a slave; and a member of that company union is beholden to the men who are operating the plant in which he is working. It is a company union. They are not unions of the employees' own choice. They can not join a union composed of men engaged in that particular craft or business. They are compelled to join a company union. It is an outlaw in the labor world. It is, as Senators said before the roll call here, one of the great reasons why labor in its struggle with capital has been so often defeated. It means the destruction of organized labor; and this amendment preserves those company unions.

MR. HASTINGS: Mr. President, I did not want to get into any controversy or argument with respect to this particular amendment. I merely wanted to inquire whether I clearly understood this bill.

I might call the attention of the Senator from New York and the Senator from Mississippi to the fact that there is a provision with respect to railroad labor which gives to a board the right to pass upon the disputes that arise between the employer and the employee. That, as I understood has always been done upon the theory that the railroads being quasi-public corporations, and being used for the benefit of the public, the Congress had a right to regulate them in that way.

If I understand this bill, we have now gone beyond the railroads; we have gone beyond those corporations that serve the public, and we have now entered into an entirely new field; namely, the field of every industry in the country, of every kind. We are undertaking to control them under this bill, and at the same time we are giving labor the right to make their own agreements among themselves, with no authority, anywhere, in the administrator or any board or anybody else, to pass upon the questions that may arise between the laborer and the employer.

It seems to me that if we have put all of these various industries in the hands of one man, giving him 100 per cent control of all of them, at the same time it might be well for us to consider whether he ought not to have some control over the people that they depend upon to produce

the things that they manufacture.

MR. KING: Mr. President, the interpretation placed upon the amendment offered by the Senator from Nebraska is not, in my opinion, sound, and it certainly is not the construction given to the language of the amendment when it was being considered by the committee. It was my understanding when the amendment was offered in the committee that it was for the purpose of affording protection to labor and to restrain efforts that might be made by employers to interfere with employees. It was designed also, as I understood, to respect conditions where the relation between the employee and the employer were entirely satisfactory. The section as a whole, including the amendment now under consideration, properly interpreted, as I believe, is designed to permit employees to organize and bargain collectively through representatives of their own choosing, and further, to provide that they shall be free from interference, restraint, or coercion upon the part of their employers or any of their agents or any other person. Certainly the language of the section not only recognizes existing unions, and guards and protects the members of unions from any interference or coercion by their employers or any other person, but it also recognizes and, indeed, guarantees the right of employees to organize and to bargain collectively. Existing unions are preserved and protected, and unions to be organized are likewise to be preserved and protected against interference or coercion. In other words, the utmost freedom is provided to all employees to form unions or to refrain from forming unions, and whether employees are unionized or not they are to be free from coercion or interference from employers.

The language criticized by the Senator, properly interpreted as I believe, declares that where satisfactory relations exist between employer and employee there shall be no compulsion to disturb such relations.

Under this provision it is obvious that if a plant is unionized the employer may not interfere with such union organization or restrain or coerce in any way the members of such union. The employees are free to maintain their union, free from any interference of any kind at the hands of the employer. The amendment also provides that the employees shall have the right to organize for the purpose of agreeing upon wages, hours of labor, and other conditions of employment. In other words, the whole spirit of the section, as amended, as I interpret it, is to afford the greatest possible protection to labor and to give employees unrestrained and unrestricted right to organize and to collectively bargain as to wages, hours of labor, and so forth.

I do not read into the language of the proposed amendment the slightest interference with labor in its dealings with its employers. Employees may organize or not as they please; they may form unions or other forms of organization if they desire. Any interference upon the part of employers with their employees or with organizations now in existence or that hereafter shall be organized would come within the denouncement of the statute.

I have always believed that labor had the right to organize and to bargain collectively with employers. My recollection is that I organized the first miners' union in my own State, and upon a number

of occasions acted as attorney for union labor.

In our capitalistic system there is much to be said in favor of the organization of labor. That labor has derived benefits from union organizations must be conceded by all, and I should vigorously oppose any plan or any legislation that would interfere with the desires of the employees to organize and to collectively act to secure all legitimate rights and benefits.

MR. WHEELER: Mr. President, let me say that I cannot understand how the Senator from Utah can put that construction on it, because of the fact that it provides, first, that a code shall be set up, and the first thing the code is going to contain is a provision that the employees shall have a right to organize and bargain collectively and shall be free from interference, restraint, or coercion on the part of the employers of labor. Then it provides that nothing in this title shall be construed to compel a change in an existing satisfactory relationship.

There is nothing in the first paragraph which could possibly be construed as changing existing conditions if they were satisfactory, but it simply means that the men themselves shall have a right to go out and organize or join a union if they see fit to do so.

The proviso instead of protecting organized labor, instead of protecting the man who wants to join a union would simply in effect prevent him from joining a union. The proviso would absolutely undo what is done in the first part of the provision.

MR. CLARK: Mr. President, I submit to the Senator that the proviso would not do any such thing. The proviso is that nothing in this title shall be construed to compel a change. The remaining portion of subparagraph (1) has already provided for the right to collective bargaining, guaranteeing that the employees shall be free from any interference, restraint, or coercion. Subparagraph (2) provides that no employee and no one seeking employment shall be required as a condition of employment to join any company union, or to refrain from joining any organization of his own choice. All the proviso does is simply to say that the statute shall not be construed to compel a change in a satisfactory relationship.

MR. WHEELER: Of course; but, as I said before, every man in the Senate, I think, wants to see industry compelled to give shorter working hours. Every man in this body and in the other body of the Congress wants to see these sweat shops, which in some instances today are paying to the women and children workin in some of those places as low as 25 or 50 cents a day, compelled to stop that sort of thing.

If we put this proviso, in, we cannot prevent them continuing those practices. What I want is some power in this land to compel them to stop these sweat shops from working women and children long hours, and it cannot be done if we leave this proviso in, because of the fact that they will simply say the working conditions are satisfactory, and they will get the poor girl who is working long hours, for small wages, to come forward and say that conditions are satisfactory. If she does not do

it, she will be thrown out on the street.

MR. ROBINSON of Indiana: Mr. President, is it not true that the net effect of this committee amendment would be to legalize the "yellow dog" contracts wherever they are now existing?

MR. WHEELER: I would not be of that opinion, because of the fact that the next subdivision provides, "that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing."

MR. ROBINSON of Indiana: Even so, if we accept this proviso which the committee has inserted, would it not nullify the succeeding statement?

MR. WHEELER: No; I do not think so. That would not be the interpretation I would put upon it.

MR. NORRIS: Mr. President, it seems to me perfectly clear that it might be used, if there is an agreement now existing with a company union that has any kind of a contract, and they will say it is satisfactory, which they will, and especially in these times, when to lose a job of most any kind means starvation for the family. It may be the means where one exists now, of continuing a "yellow dog" contract or any other kind of a contract.

MR. ROBINSON of Indiana: That is precisely what I was getting at. It would permit coercion to be applied by the employers in times like these, which would simply in the net effect mean legalizing the "yellow dog" contract.

MR. BONE: Mr. President, from a somewhat lengthy experience with organized labor, as counsel for a labor organization, I am compelled to agree wholly with the Senator from Nebraska (Mr. Norris) and with the remarks just made by the Senator from Montana (Mr. Wheeler).

I know that labor works always at a distinct disadvantage, and I think we are going to make a very sad blunder if we in any wise hamper the freest expression on the part of organized labor groups. I know what the Senator from Montana says is absolutely true. There are girls and men working in the industries in this country who do not dare to say their souls are their own so far as organization is concerned, and certainly we should not hamper them.

It seems to me the language in the bill, aside from that in the italics, which is the committee amendment, is ample to protect any reasonable employer, and I think it is going to be a tragic blunder if we, in the enactment of so-called "progressive legislation", make it apparent to labor all over the country that we are now trying to hamper these organizations which so far have been the only bulwark of labor in maintaining decent standards of labor and decent working conditions. For that reason I am wholly in sympathy with the effort of the Senator from Nebraska to strike this provision out. I think there is ample left to protect any fair-minded employer.

I do not speak idly about this. I have had long years of experience with these problems as attorney for these groups, and I know the circumstances under which labor works all the time, and in these tragic and trying times it is going to be infinitely harder for labor to get a square deal because of the economic pressure which compels them to stay on the job whether conditions are fair or not.

THE PRESIDING OFFICER: The question is on agreeing to the committee amendment as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The result was announced - yeas 31, nays 46, as follows:

YEAS - 31

Austin	Bieterich	Hebert	Reed
Bailey	Bess	Hoan	Robinson, Ark.
Bankhead	George	Keyes	Sheppard
Barbour	Goldsborough	King	Steiwer
Barkley	Gore	Lewis	Stephens
Carey	Hale	Logan	Vandenberg
Clark	Harrison	Metcalf	White
Dickinson	Hastings	Patterson	

NAYS - 46

Adams	Costigan	McCarran	Shipstead
Ashurst	Cutting	McGill	Smith
Bachman	Dill	Murphy	Thomas, Utah
Black	Duffy	Neely	Thompson
Bone	Erickson	Norris	Trammell
Bratton	Hatfield	Nye	Tydings
Brown	Hayden	Overton	Van Nuys
Bulkley	Johnson	Pope	Wagner
Byrnes	LaFollette	Reynolds	Walsh
Capper	Lonergan	Robinson, Ind.	Wheeler
Connally	Long	Russell	
Coolidge	McAdoo	Schall	

NOT VOTING - 19

Borah	Couzens	Glass	Pittman
Bulow	Dale	Hendrick	Thomas, Okla.
Byrd	Davis	McKellar	Townsend
Caraway	Fletcher	Maloney	Walcott
Copeland	Frazier	Norbeck	

So the committee amendment as amended was rejected.

MR. [illegible]: Mr. President, I offer an amendment to come in on page 11, line 3, after the word "President", to insert a semicolon and the following:

And (4) that employers shall not transport or assist in transporting employees from one State, county, city, or place to another for the purpose of taking the place of men out on strike.

9860

I will state that the purpose of the amendment is simply this: It proposes to add a new paragraph or a new subject to be inserted in the Code. In other words, the bill provides that:

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions.

Then follow clauses (1), (2), and (3), and I have asked that this fourth condition shall be added.

Let me say to the Senate that the reason why I propose to add this clause is because of the fact that when the Senate ordered the investigation, for instance, upon which the Senator from New York was a member, into the coal strike in Pennsylvania, we found this situation to exist: Immediately when there was difficulty between the men and their employers, the great coal companies went down South and brought trainloads of Negroes up to Pennsylvania, shipped them in in box cars and kept them there living almost in slavery, one might say, and taking the place of those white men; in other words, using those Negroes merely as strike-breakers. Of course when the white men returned to work, as they did, agreeing after a while with their employers, those Negroes were thrown out of employment and onto the community.

The purpose of this amendment is simply to prevent that sort of practice by great organizations of wealth throughout the country. In communities where such practices are indulged they only breed disorder and trouble; and it seems to me when organized capital is going to get the opportunities and the privileges which it will get under this proposed law that it ought to be willing to make a part of its code the agreement that in the event it has a disagreement with its employees and the employees cease to work temporarily it will not bring into that community swarms of strike breakers from outside communities. The bringing in of strike breakers has been the chief source of bloodshed and riot in pretty nearly every community where there have been labor troubles. For that reason, Mr. President, I hope this amendment will be adopted.

THE PRESIDING OFFICER: (Mr. Neely in the chair) The question is on the amendment offered by the Senator from Montana.

The amendment was rejected.

APPENDIX IV

PROPOSED CODE OF FAIR COMPETITION FOR THE

IRON AND STEEL INDUSTRY

SCHEDULE C.

FUNDAMENTAL PRINCIPLES OF EMPLOYEE REPRESENTATION PLANS

The fundamental principles of Employee Representation Plans in the Industry are substantially as follows:

1. There shall not be any discrimination against any employee because of race, sex or creed, or any impairment of or any interference with any right of such employee to belong to or not to belong to any lawful society, fraternity union or other organization.

2. Employees shall have the right to hold elections of their representatives at least once in each calendar year.

3. In order to avoid intimidation from any source whatsoever, nominations of candidates for election shall be made by secret ballot and elections from among candidates so nominated shall also be by secret ballot. Such nominations and elections shall be held on the premises of the employer where the employees participating therein are employed at times and places in each case convenient for such employees and after ample notice thereof to them.

4. The candidates nominated and the representatives elected shall be chosen from among the employees who shall not participate in the management of the business of their employer. The representatives so chosen shall be sufficient in number and from among the employees in the different types of labor so that each such type shall be fairly represented.

5. Duly elected representatives of the employees shall have the right to hold their meetings without the attendance thereat of any representative of the management of their employer.

6. Procedure shall be maintained whereby duly elected representatives of the employees may confer jointly with one or more representatives of their employer at regular intervals, to the end that such representatives shall have full opportunity for fair and unhampered discussion with such representative or representatives of such employer of any topic of mutual interest.

7. In case the duly constituted representatives of the employees or committees of such representatives shall be unable to agree with the duly constituted representatives of their employer upon any question relating to hours of labor, rates of pay and other conditions of employ-

Appendix IV (Continued)

ment, procedure for appeal shall be maintained, -- if necessary, to the head of such employer (in the case of a corporation, to its chief executive officer) responsible (in case the employer shall be a corporation, under its Board of Directors) for the management of the business of such employer, with a view to a final decision that shall be just and fair as between the parties interested.

8. Such plans shall be so operated as to insure to such representatives of the employees full protection in the conscientious representation of their constituents.

APPENDIX V

NATIONAL RECOVERY ADMINISTRATION

IMMEDIATE RELEASE
August 31, 1933.

RELEASE NO. 580

LABOR ADVISORY BOARD STATEMENT

At the close of a meeting today of the Labor Advisory Board, Acting-Chairman William Green issued the following statement in behalf of the Board:

Misrepresentation compels the Labor Advisory Board to state why it believes the NRA would court disaster by accepting in codes any so-called "efficiency" or "individual merit" clauses or other disguised anti-labor provisions.

The Board opposed this clause in one code. Now it finds it in 29 other codes recently submitted. Codes are being revised on the eve of hearings to get this clause in. Whether prefaced with an open shop declaration or with a disclaimer of intent to modify the collective bargaining provisions of the Recovery Act, the wording generally runs that nothing in the code "shall prevent the selection, retention or advancement of any employee on the basis of his individual merit (or efficiency) without regard to his union radio or non-membership in a labor (or other) organization."

This clause will rise to plague the NRA in the working of any code where its insertion is permitted.

Efficiency and merit are fine words and the Board's opposition is misrepresented into implying that we would protect the inefficient. This is the revival of an ancient slander on organized labor. Also it signals something more important for the NRA.

As practical men, with long experience of this very clause, we know the misuses to which "efficiency" and "merit" are put.

The terms have served as a screen behind which employers opposed to any organization by their employees have intimidated or eliminated wage earners favoring organizations of their own. The terms as applied have left the sole determination of what constitutes efficiency or merit to the employer without adequate appeal by the workmen who are being discriminated against.

At the present time everywhere in basic industries workmen who take at face value Section 7a of the Recovery Act are organizing themselves and asking guidance and support from national unions. If those men should be systematically discharged, - no matter how efficient they had been for years, - and deprived of their livelihood because they lost "merit" by joining unions, a situation of wide unrest would result for which any NRA code containing such clauses would be blamed. We foresee this clause, excerpted from the code and posted up in factories by recalcitrant employers, as if countersigned by the Administrator and the President, and pointed to as the justification for hiring and firing

promoting and demoting, as the employer pleases. Among the industries now so keen for this clause are the very ones that in the past have decimated their labor forces to root out union men, all in the name of individual merit.

Future victims will hardly forgive NRA because such clauses are prefaced by a legalism about not modifying Section 7a.

The President has warned that attempts to "whittle away" the effectiveness of collective bargaining will not be tolerated. Congress overwhelmingly rejected such whittling as is now being lugged into the back door of codes. In the spirit of the President's declaration and of Congress's action the Labor Advisory Board sets its face firmly against the acceptance of any code with this clause destined to defeat the attainment of national recovery.

Members of the Board present at the meeting, beside the Acting Chairman, were John L. Lewis, Father Francis J. Haas, John Frey, Rose Schneiderman, Joseph Franklin and Sidney Hillman.

A P P E N D I X VI - A

GUIDING DOCUMENTS OF THE NATIONAL LABOR BOARD

1. Statement of N.R.A. through its Industrial and Labor Advisory Boards, August 5, 1933.

"The country in the past few weeks has had remarkable evidence of cooperation in the common cause of restoring employment and increasing purchasing power. Industrial codes are being introduced, considered and put into effect with all possible dispatch, and the number of firms coming under the President's Re-employment Agreement is inspiring.

"This gratifying progress may be endangered by differing interpretations of the President's Re-employment Agreement by some employers and employees.

"The Industrial and Labor Advisory Board jointly appeal to all those associated with industry, - owners, managers and employees, - to unite in the preservation of industrial peace. Strikes and lockouts will increase unemployment and create a condition clearly out of harmony with the spirit and purpose of the Industrial Recovery Act. Through the application of the Act the government is sincerely endeavoring to overcome unemployment through a nationwide reduction in the hours of work and to increase purchasing power through an increase in wage rates. This objective can only be reached through cooperation on the part of all those associated with industry. In order to develop the greatest degree of cooperation and the highest type of service on the part of management and labor, we urge that all causes of irritation and industrial discontent be removed so far as possible; that all concerned respect the rights of both employers and employees; avoid aggressive action which tends to provoke industrial discord, and strive earnestly and zealously to preserve industrial peace pending the construction and adoption of the Industrial Codes applicable to all business, large and small. Exceptional and peculiar conditions of employment affecting small employers and others whose business circumstances merit special consideration will be handled with due regard to the facts of the situation and with the desire to achieve increase employment and purchasing power.

"This appeal is made to the sound judgment and patriotism of all our people in the belief that even the most vexatious problem can be settled with justice and expedition where employers and employees act in accord with the letter and spirit of the National Recovery Act, without fear that any just rights will thereby be impaired. In that way only can the Re-employment Agreement be made to apply with the fairness pending the adoption of the code.

"To protect every interest, it is the unanimous recommendation of the Industrial and Labor Advisory Boards of the National Recovery Administration that a board to which differences may be referred should be created, this Board to be made up of the following members:

"Hon. Robert F. Wagner, U. S. Senator from New York,
Chairman,
Dr. Leo Wolman, chairman of Labor Advisory Board
of N.R.A.

Walter C. Teagle, chairman of Industrial Advisory Board, N.R.A.
William Green
John L. Lewis

Gerard Swope
Louis E. Kirstein

"This Board will consider, adjust and settle differences and controversies that may arise through differing interpretations of the President's Re-employment Agreement and will act with all possible dispatch in making known their findings. In return, employers and employees are asked to take no disturbing action pending hearings and final decision. This Board will promptly proceed to establish such central and local organizations as it may require to settle on the ground, such differences as arise in various parts of the country."

INDUSTRIAL ADVISORY BOARD	LABOR ADVISORY BOARD
Walter C. Teagle	Leo Wolman
Gerard Swope	William Green
Louis E. Kirstein	John Frey
David R. Coker	G. L. Berry
W. F. Vereen	John L. Lewis
Henry H. Heimann	J. A. Franklin
Austin Finch	Francis J. Haas
R. L. Lund	Sidney Hillman
John B. Elliott	Rose Schneiderman
Edward N. Hurley	
Alfred P. Sloan, Jr.	
James A. Moffett	
Henry I. Harriman	

2. Statement by the President, August 5, 1933.

"Of importance to the recovery program is the appeal to management and labor for industrial peace, which has just been sent to me for approval.

"With compelling logic, it calls upon every individual in both groups to avoid strikes, lockouts or any aggresive action during the recovery program.

"It is a document on a par with Samuel Gompers' memorable war-time demand to preserve status quo in labor disputes - and in addition to the signature of the president of the American Federation of Labor it carries the signature of every great labor leader and every great industrial leader on the two advisory boards of the Recovery Administration. It is an act of exonomic statesmanship. I earnestly commend it to the public conscience.

"This joint appeal proposes the creation of a distinguished tribunal to pass promptly on any case of hardship or dispute that may arise from interpretation or application of the President's reemployment agreement. The advantages of this recommendation are plain and I accept it and hereby appoint the men it proposes whose names will carry their own commendation to the country."

9860

3. Executive Order of December 16, 1933 (No. 6511)

EXECUTIVE ORDER

CONTINUANCE OF THE NATIONAL LABOR BOARD, ETC.

By virtue of the authority vested in me under title I of the National Industrial Recovery Act approved June 16, 1933 (Public No. 67, 73d Cong.), and in order to effectuate the purposes of said act, it is hereby ordered as follows:

(1) The National Labor Board, created on August 5, 1933, to "pass promptly on any case of hardship or dispute that may arise from interpretation or application of the President's Reemployment Agreement", shall continue to adjust all industrial disputes, whether arising out of the interpretation and operation of the President's Reemployment Agreement or any duly approved industrial code of fair competition, and to compose all conflicts threatening the industrial peace of the country. All action heretofore taken by this Board in the discharge of its function is hereby approved and ratified.

(2) The powers and functions of said Board shall be as follows:

(a) To settle by mediation, conciliation, or arbitration all controversies between employers and employees which tend to impede the purposes of the National Industrial Recovery Act; provided, however, the Board may decline to take cognizance of controversies between employers and employees in any field of trade or industry where a means of settlement, provided for by agreement, industrial code, or Federal law, has not been invoked.

(b) To establish local or regional boards upon which employers and employees shall be equally represented, and to delegate thereto such powers and territorial jurisdiction as the National Labor Board may determine.

(c) To review the determinations of the local or regional boards where the public interest so requires.

(d) To make rules and regulations governing its procedure and the discharge of its functions.

FRANKLIN D. ROOSEVELT.

The White House,

December 16, 1933.

4. Executive Order of February 1, 1934 (No. 6580).

EXECUTIVE ORDER

By virtue of the authority vested in me under title I of the National Industrial Recovery Act, approved June 16, 1933 (Public, No. 67, 73d Cong.), and in order to effectuate the policy of said act, I, Franklin D. Roosevelt, President of the United States, do hereby provide for and direct the enforcement of certain provisions of section 7 (a) of said act and the conditions contained therein, as incorporated in, and made a part of, any code of fair competition, or agreement heretofore or hereafter approved or prescribed by me, in the following manner:

1. Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said section 7(a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

2. Whenever the National Labor Board shall have determined upon an investigation, or as the result of an election, that the majority of the employees of an employer, or the majority of any specific group of employees, have selected their representatives in accordance with the provisions of said section 7(a), and shall have certified the names of such representatives to their employer, and thereafter upon complaint or on its own motion, the Board shall determine that such an employer has declined to recognize or to deal with said representatives, or is in any way refusing to comply with the requirements of said section 7(a), the Board shall report its determination promptly to the Administrator for Industrial Recovery for appropriate action.

3. The powers and duties herein conferred upon the National Labor Board are in addition to, and not in derogation of, any powers and duties conferred upon such Board by any other Executive order.

FRANKLIN D. ROOSEVELT.

Approval recommended:
H.S. J.

The White House,
February 1, 1934.

5. Executive Order of February 23, 1934 (No. 6612-A).

EXECUTIVE ORDER

Amendment of Executive Order No. 6580 of
February 1, 1934.

9860

Executive Order No. 6580 of February 1, 1934 is hereby amended by striking out paragraph numbered 2 thereof and inserting in its stead the following paragraph:

2. Whenever the National Labor Board shall find that an employer has interfered with the Board's conduct of an election or has declined to recognize or bargain collectively with a representative or representatives of the employees adjudged by the Board to have been selected in accordance with section 7(a) or has otherwise violated or is refusing to comply with said section 7(a), the Board, in its discretion, may report such findings and make appropriate recommendations to the Attorney General or to the Compliance Division of the National Recovery Administration. The Compliance Division shall not review the findings of the Board but it shall have power to take appropriate action based thereon.

FRANKLIN D. ROOSEVELT

The White House,
February 23, 1934.

Appendix VI - B

ENABLING DOCUMENTS OF THE NATIONAL LABOR RELATIONS BOARD

1. Public Resolution -- No. 44 -- 73rd Congress

(H. J. Res. 375)

JOINT RESOLUTION

To effectuate further the policy of the National Industrial Recovery Act.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7 (a) of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

Sec. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7 (a) of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

Sec. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigation authorized in section 1, and to assure freedom from coercion in respect to all elections.

Sec. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine or not more than $1,000 or by imprisonment for not more than one year, or both.

Sec. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

Sec. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Approved June 19, 1934.

2. EXECUTIVE ORDER

Creation of the National Labor Relations Board, Etc.

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act (ch. 90, 48 Stat. 195, tit. 15, U.S.C., sec. 701) and under joint resolution approved June 19, 1934 (Public Res. 44, 73rd. Cong.) and in order to effectuate the policy of said title and the purposes of the said joint resolution, it is hereby ordered as follows:

Creation of the National Labor Relations Board

Section 1 (a) There is hereby created in connection with the Department of Labor a board to be known as the National Labor Relations Board (hereinafter referred to as the Board), which shall be composed of Lloyd Garrison of Wisconsin, chairman; Harry Alvin Millis of Illinois, and Edwin S. Smith of Massachesetts. Each member of the Board shall receive a salary of $10,000 a year and shall not engage in any other business, vocation or employment. Two members of the Board shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

(b) The Board shall have authority to appoint such employees, and without regard to the provisions of the Civil Service laws, such attorneys, special experts, and examiners as it deems necessary for its own functions and for the functions of such regional, industrial, and special boards as may be designated or established in accordance with subsections 3(a) (1) and 3(a) of this order. This power, however, shall not be construed to

authorize the Board to appoint mediators, conciliators, and statistical experts when the services of such persons may be obtained through the Secretary of Labor in accordance with subsection 4(a) of this order.

Original Jurisdiction of the Board

Sec.2. The Board is hereby authorized --

(a) To investigate issues, facts, practices, and activities of employers or employees in any controversies arising under section 7(a) of the National Industrial Recovery Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce; and

(b) To order, and conduct elections and on its own initiative to take steps to enforce its orders in the manner provided in section 2 of Public Resolution 44, Seventy-third Congress; and

(c) Whenever it is in the public interest, to hold hearings and make findings of fact regarding complaints of discrimination against or discharge of employees or other alleged violations of section 7(a) of the National Industrial Recovery Act and such parts of any code or agreement as incorporate said section; and

(d) To prescribe, with the approval of the President, such rules and regulations as are authorized by section 3 of the Public Resolution 44, Seventy-third Congress, and to recommend to the President such other rules, and regulations relating to collective bargaining, labor representation, and labor elections as the President is authorized to prescribe by section 10(a) of the National Industrial Recovery Act.

(e) Upon the request of the parties to a labor dispute, to act as a board of voluntary arbitration or to select a person of agency for voluntary arbitration.

Relationship to Other Labor Boards

Sec. 3(a) The Board is hereby authorized and directed --

(1) To study the activities of such boards as have been or may hereafter be created to deal with industrial or labor relations, in order to report through the Secretary of Labor to the President whether such boards should be disignated as special boards and given the powers that the President is authorized to confer by Public Resolution 44, Seventy-third Congress; and

(2) To recommend, through the Secretary of Labor, to the President the establishment, whenever necessary, of "Regional Labor Relations Boards" and special labor boards for particular industries vested with the powers that the President is authorized to confer by Public Resolution 44, Seventy-third Congress; and

(3) To receive from such regional, industrial, and special boards as may be designated or established under the two preceding sub-sections reports of their activities and to review or hear appeals from such boards in cases in which (1) the board recommends review or (2) there is a division of opinion in the board or (3) the National Labor Relations Board deems review will serve the public interest.

(b) The National Labor Board created by Executive order of August 5, 1933, and continued by Executive Order No. 6511 of December 16,1933,

shall cease to exist on July 9, 1934; and each local or regional labor board, established under the Authority of section 2(b) of the said Executive order of December 16, 1933, if it is not designated in accordance with subsection 3(a) (1) of this order, shall cease to exist at such time as the National Labor Relations Board shall determine. The National Labor Relations Board shall have authority to conduct all investigations and proceedings being conducted by boards that are abolished by this subsection; and all records, papers, and property of such boards shall become records, papers, and property of the National Labor Relations Board. All except $100,000 of the unexpended funds and appropriations for the use and maintenance of the National Labor Board shall be available for expenditure by the National Labor Relations Board and such regional, industrial, and special boards as may be designated or established in accordance with subsections 3(a) (1) or 3(a) (2) of this order. The remaining $100,000 of such unexpended funds and appropriations shall be transferred to the Secretary of Labor for the use of the Conciliation Service in the Department of Labor. All employees of boards that are abolished by this subsection shall be transferred to and become employees of the National Labor Relations Board at their present grades and salaries, but such transfer shall not be construed to give such employees any Civil Service or other permanent status.

Relationship to Other Executive Agencies

Sec. 4 (a) The Board is hereby authorized --

(1) To request the Secretary of Labor to exercise the power conferred upon him by section 3 of the act entitled "An Act to create a Department of Labor" (ch. 141, 37 Stat. 738) to appoint Commissioners of Conciliation; and

(2) To request from time to time the Secretary of Labor to direct officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the performance of its duties.

(b) The Board shall at the close of each month make, through the Secretary of Labor, to the President a report in writing of its activities and the activities of such regional, industrial, and special boards as have been designated or established in accordance with the recommendations of the Board under subsections 3(a) (1) and 3(a) (2) of this order. Such reports shall state in detail cases heard, decisions rendered, and the names, salaries, and duties of all officers and employees appointed under the authority of this order and receiving compensation directly or indirectly from the United States.

(c) The National Labor Relations Board may decline to take cognizance of any labor dispute where there is another means of settlement provided for by agreement, industrial code, or law which has not been utilized.

(d) Whenever the National Labor Relations Board or any board designated or established in accordance with subsections 3(a) (1) or 3(a) (2) of this order has taken, or has announced its intention to take, jurisdiction of any case or controversy involving either section 7(a) of the National Industrial Recovery Act or Public Resolution 44, Seventy-third Congress, no other person or agency in the executive branch of the

Government, except upon the request of the National Labor Relations Board, or except as otherwise provided in subsection 3(a) (3) of this order, shall take, or continue to entertain, jurisdiction of such case or controversy.

(e) Whenever the National Labor Relations Board or any board designated or established in accordance with subsections 3(a) (1) or 3(a) (2) of this order has made a finding of facts, or issued any order in any case of controversy involving section 7(a) of the National Industrial Recovery Act or Public Resolution 44, Seventy-third Congress, such finding of facts and such order shall (except as otherwise provided in subsection 3(a) (3) of this order or except as otherwise recommended by the National Labor Relations Board) be final and not subject to review by any person or agency in the executive branch of the Government.

(f) Nothing in this order shall prevent, impede or diminish in any way the right of employees to strike or engage in other concerted activities.

FRANKLIN D. ROOSEVELT

The White House,
June 29,1934.

Appendix VII

NATIONAL RECOVERY ADMINISTRATION

IMMEDIATE RELEASE
August 11, 1933.

RELEASE NO. 285

NATIONAL LABOR BOARD'S FIRST DECISION.

The text of the agreement settling the striker of hosiery workers in Reading, Pa., was made public today by the National Labor Board. It was the Board's first decision since its appointment by the President.

The text follows:

Agreement between the National Labor Board and the hosiery manufacturers of Reading, Pennsylvania, and the representatives of the employees - each agreeing with the National Labor Board but not with each other, as follows:

1. The strike to be called off immediately and the employees to report to work as quickly as work is available.

2. The employees are to return to work without prejudice or discrimination.

3. Conditions of work and wages will be as agreed upon.

4. During the week beginning Tuesday, August 15, 1933, and throughout that week, employees on the payroll of the last day on which they worked at each company shall hold a meeting, elect their own chairman by secret ballot, and elect their representatives to deal with the management in working out agreements dealing with the relationship of employees and employer.

5. Each works will send to each employee on the payroll on the last day that he was at work a notice to that effect, which will entitle him to be present and vote at the meeting aforesaid.

6. This election to be held under the supervision of the National Labor Board.

7. Any disagreement in interpretation arising will also be settled by the National Labor Board.

8. Both employers and employees agree to accept the decision of the National Labor Board as final and binding.

NATIONAL LABOR BOARD

LEO WOLMAN
JOHN L. LEWIS
LOUIS E. KIRSTEIN
GERARD SWOPE
WILLIAM L. GREEN
WALTER C. TEAGLE

Appendix VIII

NATIONAL RECOVERY ADMINISTRATION

FEBRUARY 4, 1934 Release No. 3125

National Recovery Administrator Hugh S. Johnson and Donald R. Richberg, the Administration's general counsel, today issued the following joint statement:

"Because of an erroneous press interpretation issued yesterday of the Executive Order of the President, which empowered the National Labor Board to supervise the conduct of elections to determine employee representation in certain cases it is desirable to explain what is and what is not covered by the Executive Order.

"1. - The Executive Order provides a method whereby any specific group of employees or all the employees of a plant or of one employer may select, by a majority vote; representatives clearly empowered to act for the majority in their relations with their employer.

"2. - This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer.

"3. - Section 7 (a) affirms the right of employees to organize and bargain collectively through representatives of their own choosing; and such concerted activities can be lawfully carried on by either majority or minority groups, organizing and selecting such representatives in such manner as they see fit. Also in affirming his right of collective action the law lays no limitation upon individual action.

"4. - The joint statement issued by the Administrator and the general Counsel on August 24, 1933, concerning Section 7(a) provides an interpretation of this Section, which has not been changed and is not modified by the Executive Order.

"5. - The purpose of the Executive Order is to provide a definite workable method for the selection by the majority of any group of employees of their representatives who will thereupon be entitled to recognition as the representatives of the will of the majority of the employees eligible to join in that selection.

"6. - As a practical proposition the National Labor Board would find it impossible to deal with every controversy that might arise between rival groups of employees, each seeking to represent a fraction of employee opinion, or to conduct thousands of elections so that every little group of employees could select representatives to represent every fraction of employee opinion. Nor could any employer maintain satisfactory relations with his employees through

unlimited negotiations with an indefinite number of employee representatives expressing every possible variety of opinion. The most important question to be solved in carrying out the purposes of Section 7(a) is to determine who are the representatives of the majority of the employees affected. It is for the purpose of solving that problem that the Executive Order was issued, which in no way excludes the exercise of right by minorities or individuals.

"7. - As has been pointed out frequently the right of collective bargaining is not the right to obtain a specific contract because a contract must be the result of an agreement, and neither employees nor employers can be compelled to enter into a specific contract. But it is to be assumed that if both employer and employees are assured that the representatives of the employees have been selected freely and without coercion to represent the desires of a majority of those affected, then any contract resulting from such collective bargaining will stabilize employment conditions and produce the most satisfactory relations possible between employer and employees.

"8. - In so far as the statement in the press release might be read as saying that employees' representatives in all company unions are chosen by employers it was not so intended as there is no evidence that such is the case. Nor is it true that employees if permitted to act in their own free choice, may not select a company union (meaning local plant union). The principal purpose of the Order was to insure that the choice be free -- not to influence the choice between any particular form of employee organization.

"HUGH S. JOHNSON
ADMINISTRATOR FOR NATIONAL RECOVERY

"DONALD R. RICHBERG
GENERAL COUNSEL"

--oOo--

APPENDIX IX-A

ORDER

INDUSTRIAL RELATIONS COMMITTEES

NO. X - 12

1. All industries operating under approved codes which specifically provide for the creation of agencies for the adjustment of individual labor complaints and labor disputes, will immediately set up such agencies as required by the code unless they have already done so.

2. All industries operating under approved codes which provide for the creation of an agency to handle labor disputes exclusively, will create such agency immediately, if they have not already done so, and in addition will create an agency to handle labor complaints.

3. All industries operating under approved codes which provide for the creation of an agency to handle labor complaints exclusively, will create such agency immediately if they have not already done so, and in addition will create an agency to handle labor disputes.

4. Industries operating under approved codes which do not specifically provide for the creation of agencies to handle labor disputes and labor complaints are requested immediately to proceed in each case to create an Industrial Relations Committee to handle both labor complaints and labor disputes.

5. Industries will be governed by the procedure and suggested standards of NRA, Bulletin No. 7, (Part Three, paragraphs I, II, and III) in creating these committees. All industries which already have Industrial Relations Committees will report immediately to the Administrator on the personnel, scope and functioning of the Committee.

HUGH S. JOHNSON

Hugh S. Johnson,
Administrator.

March 30, 1934.

APPENDIX - IX -B

ADMINISTRATIVE ORDER X-69
July 27, 1934

LABOR COMPLAINTS AND DISPUTES

By virtue of the authority vested in me under the National Industrial Recovery Act, I hereby prescribe the following regulations, superseding Administrative Order X-12.

1. Administrative Order X-12 is hereby abrogated.

2. With respect to labor complaints:

a. Code Authorities that have not already done so, are requested to submit to the Administrator for approval, plans for the handling of labor complaints. Until such plan has been approved, a Code Authority is not authorized to handle labor complaints, with the exception of complaints voluntarily registered with the Code Authority.

b. Complaints may be handled by a bi-partisan committee, if desired; or, if such method is not deemed practicable or desirable, by a committee composed of impartial members. In either event, the plan of organization and the personnel of the committee are subject to approval by the Administrator.

c. In many instances, it will be found practical for groups of related trades or industries to cooperate in establishing a single committee. In view of the potential resulting economy, efficiency, and elimination of overlapping, serious consideration of this type of plan is urged.

d. If an industry, due to small size or other good cause, prefers that labor complaints should be handled by the Compliance Division, a request to that effect will be considered and a decision reached in the light of the particular facts involved.

3. With respect to labor disputes:

a. This Administrative Order does not affect boards heretofore authorized to deal with labor disputes.

b. Industries are not required by NRA to set up boards under codes, for the handling of labor disputes. Any industry contemplating such a board should study Public Resolution 44 of the Seventy-Third Congress and the subsequent Executive Order 6763 of June 29, 1934, creating the National Labor Relations Board and should consult said Board and the Administrator.

c. Cases heard by boards heretofore or hereafter authorized to deal with labor disputes may be reviewed by the National Labor Relations Board in the manner provided in said Executive Order No. 6763. Moreover, such boards may be designated as special boards or otherwise affected by the President acting pursuant to the authority conferred by said Public Resolution 44.

HUGH S. JOHNSON

Administrator for Industrial Recovery.

APPENDIX X-A

NATIONAL LABOR BOARD: PRINCIPLES FOLLOWED IN DECISIONS (*)

Arbitration

Where the parties have not been able to settle their differences by collective bargaining, the National Labor Board has frequently recommended arbitration. In some cases the Board has acted as arbitrator itself upon a joint submission of the dispute by the parties (particularly in wage dispute cases). All arbitration, however, has been voluntary and based upon the joint submission and consent of the parties.

Back Pay

When an employer has failed to observe an agreement to reinstate strikers by a certain date, the National Labor Board has recommended that he make restitution to those employees, by paying them back wages from the date of the breach of the agreement or a reasonable time thereafter.

Breach of Collective Agreements

The Board has deprecated the breach of collective agreements, whether by employers or employees.

Collective Bargaining

The Board has held that the employees' right to bargain collectively imposes a corresponding duty on the employer. Collective bargaining has been construed to require that the parties approach negotiations with open minds, and exert every reasonable effort to reach an agreement. So far as the obligations of employees are concerned, the Board has deprecated the calling of a strike without attempt at negotiations or the presentation of grievances.

Company Union

The Board has ruled that organization is a matter exclusively within the control of the employees. It has counselled a "hands off" policy on the part of the employers. It has condemned the initiation of a company union by an employer and the participation by him in its affairs, where such initiation and participation have, in effect, been an interference with the employees' self-organization, or resulted, in fact, in the domination of the organization by the employer, and where the employees have not clearly consented thereto.

The Board has held that the mere fact that an election of representatives has been conducted under an employee representation plan does not constitute approval of the plan itself. It has drawn a distinction between plans which were fully submitted to the employees for their acceptance or rejection, and plans which were imposed upon them.

(*) Adapted from "Statement of Labor Board Principles Issued to Boards" NRA Release #4688, April 30, 1934; and "National Labor Board Principles with Applicable Cases, August 5, 1933 to July 9, 1934". NLRB Release #134, August 21, 1934.

Disclosure of Employees' Names:

It is unnecessary for a collective bargaining agency to disclose the names of those it represents, when it seeks to bargain collectively with the employer.

Discrimination

The Board has ruled that the discharge of employees because of their union activities is contrary to section 7 (a). The Board has ordered the reinstatement of employees whose discharge it found to have been discriminatory. Other forms of discrimination have been held unlawful or improper, such as demotion, loss of seniority status, discriminatory non-reinstatement and discharge for protest against probable P.R.A. violation.

Elections

The Board has employed the device of an election by secret ballot under Governmental supervision when an employer has questioned the authority of any individual or agency to act as the representative of his employees, and when a substantial number of employees have requested that a poll be conducted. The Board has held that an election is a matter which concerns the employees exclusively and that the employer can in no way interfere with the conduct of an election.

In certain cases the Board has restricted the franchise to employees on the pay roll of the company before a strike. In other cases it has extended eligibility to the employees on the pay roll on the date of the election or the Board's decision as well as to those strikers who manifest a desire to be reinstated, or to those employees whose charges of discrimination are sustained. In still other cases the decision of the Board has not specified which persons shall be eligible to vote, but has left that to subsequent decision by the Regional Board conducting the election. Except for these special situations, the practice has been to permit all employees (except strictly temporary ones) on the pay roll on the day of the election to participate in the ballot.

Form of Contract

The Board has approved various forms of contract for designation of the collective bargaining agency chosen by the employees. In the absence of agreement by the parties the Board has recommended that the collective agreement be made by the employer and the employees' agent, whether organization or individual, as representative of the employees.

Interference

Discriminatory discharges, - Initiation of company unions and participation in their affairs, - Restrictions on the qualifications of representatives for collective bargaining, - Transfer of work to other factories, changes in corporate structure and tranfer of plants to other cities, - or the shut-down of a plant.

Jurisdiction of the Board

The Board stated its jurisdiction to be defined by the Executive Orders of December 16, 1933, and of February 23, 1934, to "adjust all industrial disputes, whether arising out of the interpretation and operation of the President's Reemployment Agreement or any duly approved industrial code of fair competition, and to compose all conflicts threatening the industrial peace of the country", and the investigation of facts surrounding alleged violations of 7 (a).

Jurisdictional Disputes

Where, in the construction of Government projects, the conflicting labor organizations are unable to settle the dispute by negotiation or are unwilling to submit the dispute to a board of arbitration, or where the American Federation of Labor has failed to adjust the controversy, the employer may then determine which union shall receive the disputed work.

Majority Rule

The representatives selected by the majority of the employees within a given plant or department, are the sole collective bargaining agency for the plant or department.

"New Rights" Bestowed on Employees by Section 7(a)

Section 7(a) conferred new rights upon employees, which cannot be impaired by the existence of an organization sponsored by the management prior to the N.I.R.A. or the effective date of the applicable code. If a substantial number of employees petition the National Labor Board for an election for the choice of representatives, the Board will conduct such an election despite the fact that representatives have already been selected for a term under a plan which they had no opportunity to accept or reject.

Non-appearance Before Boards

The Board has pointed out that the non-appearance of parties before the National and Regional Labor Boards prolongs controversy, defeats the purposes of the N. I. R. A., and makes it impossible for the Board fully to ascertain the pertinent facts. The Board has deprecated the tendency of certain employers to appear by attorneys rather than in person.

Preferential List

In a ruling terminating a strike, the Board has frequently recommended that an employer, if business conditions do not permit him to reinstate the strikers at once, should place them on a preferential list and reinstate them in order of seniority before hiring any new employees. The Board has often urged the division of work among employees in order to expedite reinstatement from such a preferential list. In a number of cases in which the Board found that the evidence did not sustain a finding of discriminatory discharge, it has nevertheless recommended that they be reinstated before any new employees are hired, in order that harmony and good will may be reestablished in the plant.

Reinstatement

The board has ordered reinstatement as a remedy for discharge which it considered discriminatory. It has frequently recommended or ordered the reinstatement of all strikers at the conclusion of a strike if business conditions permitted. The Board has tended to couch the order of reinstatement in mandatory language in cases in which it felt that the strike was justified and/or that it resulted from a violation of law on the part of the employer.

In a number of these cases the Board has expressed its opinion that the strikers were entitled to priority over employees hired since the strike. The Board has recommended the reinstatement of strikers as soon as possible in a large number of other cases, without using mandatory language.

"Representatives of Their Own Choosing".

Employees may select any representatives whom they choose as their agents for collective bargaining. The employer may not restrict their right of free choice in any way. Since the word "representatives" in Section 7(a) is used in its generic sense, employees may select a union as their representative.

"Self-Organization"

The Board has ruled that the term "self-organization", as used in Section 7(a), means organization wholly free from interference by the employer: organization and representation concern the employees exclusively, and an employer may not, under normal circumstances, initiate a representation plan in the absence of a request from the employees.

Seniority

Reinstatement and placing on a preferential list in order of seniority, after a strike, has frequently been recommended for the purpose of avoiding all question of possible discrimination.

Shut-down of Plant and Transfer of Work

The Board has condemned the moving or shut-down of a plant, the dissolution of corporations, and the transfer of work to other factories when it found that an employer took such action in order to interfere with the self-organization of his employees. It has directed the reinstatement of employees of the old plant in the new one, when it found that there had been discrimination.

Strikers as Employees

Although the National Labor Board has made no explicit ruling stating that strikers are employees, a number of decisions ordered their participation in elections or their reinstatement, or both, and thus treating them as employees.

Union Activity during Working Hours

The Board has ordered the reinstatement of an employee discharged because of union solicitation during working hours, in the absence of a showing by the employer that this employee was warned against such activity, or the existence of a company rule forbidding it, or that it interfered with the employee's work.

Violence

The Board has ruled that striking employees who have been proven guilty of violence in the course of a strike need not be reinstated. The Board has often recommended that special tribunals be established to determine the question of violence, in order to avoid the delays involved in court proceedings.

Vote of Employees Regarding Acceptance of Board's Recommendations

In the case of a precipitate strike, where the question has arisen as to whether the union membership desires to continue the strike, the Board has recommended that employees vote by secret ballot to determine whether they wish to accept the Board's proposals for settlement.

Written Agreement

The Board has often recommended that agreements which are reached between employers and employees should be reduced to writing in order to avoid later conflict and insure certainty.

- - - -

APPENDIX X-B

NATIONAL LABOR RELATIONS BOARD: PRINCIPLES FOLLOWED IN DICISIONS (*)
V. DECISIONS

While the interpretation of section 7 (a) is not free from difficulty at some points, we have sought to develop a body of decisions in harmony with the language of the statute and the intent of Congress as manifested in the hearings and debates on the National Industrial Recovery Act. As the Board stated in its decisions in the Houde Engineering Corporation Case:

> "Section 7 (a) must be construed in the light of the traditional practices with which it deals, and the traditional meanings of the words which it uses. When it speaks of 'collective bargaining' it can only be taken to mean that long-observed process whereby negotiations are conducted for the purpose of arriving at collective agreements governing terms of employment for some specified period. And in prohibiting any interference with this process, it must have intended that the process should be encouraged, and that there was a definite good to be obtained by promoting the stabilization of employment relations through collective agreements."

In this the Board gave to section 7 (a) a fundamental construction similar to that given the comparable provisions of the Railway Labor Act of 1926 by the United States Supreme Court in Texas and New Orleans Railroad v. Brotherhood of Railway and Steamship Clerks, where Chief Justice Hughes wrote for a unanimous Court:

> "The legality of collective action on the part of employees in order to safeguard their proper interest is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. American Steel Foundries v. Tri-City Central Trade Council, 257 U. S. 184,209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both."

(*) National Labor Relations Board, Sixth Monthly Report, February 13, 1936, pp. 3-5

Acting on this fundamental policy and construction, the Board has in its many decisions to date sought to give content to the legal rights and duties expressed by Congress in Section 7 (a), in their application to the many factual situations in which they arise.

(1) Collective Bargaining. The right of employees to bargain collectively carries with it a correlative duty on the part of the employer to bargain with their representatives. Without this duty to bargain the right to bargain would be sterile; and we do not believe that Congress intended the right to be sterile. The employer is obligated by the statute to negotiate in good faith with his employees' freely chosen representatives, to match their proposals, if unacceptable, with counter proposals, and to make every reasonable effort to reach an agreement for a period of time. Thus empty declarations by the employer of willingness to confer with union representatives, offers to adjust individual grievances as they arise, or mere assent to those terms or demands as are found satisfactory, without an understanding as to duration, do not constitute compliance with the statute.

While the failure to reduce an agreement to writing is not necessarily a violation of the law, the Board has frequently urged that this action be taken, as consistent with business expediency, common sense, and the general purpose of the statute to stabilize industrial relations upon a basis clearly expressed and mutually agreed upon. And the insistence by an employer that he will go no farther than to enter into an oral agreement may be evidence, in the light of other circumstances in the case, of a denial of the right of collective bargaining. Again, while the breach of a collective agreement is not in itself a violation of the statute, the Board has held illegal the wholesale discharge of employees in violation of an implied term of such agreement or understanding without exhausting the processes of collective bargaining, since the employer is obligated to bargain collectively before modifying or terminating an agreement, arrangement, or understanding. The Board has prescribed the activities of so-called "run-away employers" who sought by the transfer of their business to other localities to avoid their prior agreements or understandings and to defeat the right of their employees to bargain collectively.

(2) Majority Rule. Acting on the view that any interpretation of section 7 (a) which in practice would hamper self-organization and the making of collective agreements cannot be sound, the Board in the Houde Engineering Corporation case embraced the majority rule. It is there stated as follows: When a person, committee or organization has been designated by the majority of employees in a plant or other appropriate unit for collective bargaining, it is the right of the representative so designated to be treated by the employer as the exclusive bargaining agency of all the employes in the unit, and the employer's duty to make every reasonable effort, when requested, to arrive with this prepresentative at a collective agreement covering terms of employment of all such employees, without thereby denying to any employee or group of employees the right to present grievances, to confer with their employer, or to associate themselves and act for mutual aid or protection. This construction accords with American traditions of political democracy, with established custom in industrial relations, with the decisions of the National Labor Board, and with those of the National War Labor Board and the Railroad Labor Board under statutes or pronouncements similar in

purpose and frequently strikingly similar in language to section 7 (a). It has been expressly confirmed no less than three times by the President in his Executive Orders, those of February 1, 1934, with reference to the National Labor Board, and of June 28 and September 26, 1934, establishing the Steel and Textile Labor Relations Boards. The rule was expressly written into the Railway Labor Act by Congress in the amendments of June, 1934. We believe it to be the keystone of any sound, workable, system of industrial relationship by collective bargaining.

Often the question of what industrial unit should be recognized as appropriate presents difficulties which require careful consideration. Plant representation may be the proper unit; or an industrial, as against a craft, union. The organization of the business, the community of interests, geographical convenience, prior bargaining relations, functional coherence-- all these considerations should be taken into account. This is peculiarly an administrative matter which has been determined flexibly by the Board, having in mind the growth and nature of labor unions, without laying down too rigid general principles. The Board has sought wherever possible to avoid dictating labor union policies or being drawn into deciding union jurisdictional disputes.

(3). Elections. The Board believes that the device of elections in a democratic society has, among other virtues, that of allaying strife, not provoking it. An election is merely a device for determining as a matter of fact who are the representatives of the majority of the employees in the particular unit. Therefore, where there are contending factions of employees, or a substantial number of employees in any particular unit call for an election, this should, in most cases, constitute grounds for holding that the public interest requires it.

(4). Company Unions. The statute does not render illegal a "company union", if by that term is simply meant a self-organization of the employees in a particular plant into some form of association for collective bargaining or mutual aid or protection. What the statute prohibits is the interference, restraint or coercion of employers, or their agents, in connection with their employees' designation of representatives of their own choosing, self-organization, or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Thus violations of law may arise in respect of the initiation, sponsorship, financial support, elections, by-laws or other affairs of any labor organization, including a plant organization or company union.

Participation by employees in an election under a company union plan which has not been submitted to them for approval, has been taken to indicate an affirmative acceptance of that organization as the desired means of collective bargaining. In certain extreme cases of coercion and interference or where the company union plan clearly could not operate as a means of collective bargaining, the Board has disqualified the company as an agency for that purpose.

Our records show that in 30 percent of the 86 cases heard by the Board, company unions were a primary or attendant cause of the dispute. All but two of these unions were formed or revived since the passage of the National Industrial Recovery Act; and a great majority became active

immediately before or after a contemporary labor union organizing movement, or in close relation to a strike.

(5) Discrimination. This is by far the most frequent form of interference, restraint or coercion with choice of representatives or self-organization, being involved in approximately half of the cases heard by the Board. It has arisen in a variety of situations, including discharge, lay-off, demotion or transfer, forced resignation, or division of work, and in connection with reinstatement following a change in corporate structure, strike, temporary lay-off or transfer of plant. In numerous cases of this type the Board has ordered employees reinstated to their former positions.

APPENDIX XI

Selected Bibliography

Government Documents

Legislative Documentation of the National Industrial Recovery Act, 73rd Congress, 1st Session, 1933 - Bills, Hearings and Reports listed in Appendix I-B

Congressional Record, Volume 77. 73rd Congress, 1st Session, 1933

Decisions and Releases of the National Labor Board

Decisions and Releases of the National Labor Relations Boards

Minutes of the NRA Industrial and Labor Advisory Boards

NRA Bulletins and Releases

NRA Division of Review Labor Studies

Executive Orders

Other Materials

Dearing, Charles L. et al. "The ABC of the NRA" Brookings Institution, Washington, 1934

Johnson, Hugh S. "The Blue Eagle from Egg to Earth". Doubleday, Doran and Company, 1935

Lorwin, Lewis L. and Wubnig, Arthur "Labor Relations Boards". Brookings Institution, Washington, 1935

Lyon, Leverett et al. "The National Recovery Administration", Brookings Institution, Washington, 1935

Richberg, Donald R., "The Rainbow", Doubleday, Doran and Company, Inc., New York, 1936

Spencer, William H. "Collective Bargaining Under Section 7 (a) of the National Industrial Recovery Act", University of Chicago Press, Chicago, 1935

Twentieth Century Fund, Inc., "Labor and the Government", McGraw-Hill Book Company, New York, 1935

Economic Essays in Honor of W. C. Mitchell, Columbia University Press, New York, 1934, chapter by P. F. Brissenden

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I here by appoint Leon C. Marshall, Director of the Division of Revie w.

The study sections set up in t he Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, misce llaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparision with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades. Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

9768—6.